Eastbury, The Lees, Challock, Ashford, Kent TN25 4DE
Telephone: 01233 740542 E-Mail: grahamngm@john-lewis.com

From: Graham Nassau Gordon Senior-Milne, Baron and Lord of the Regality of Mordington

To (via E-Mail): Lord Brown of Eaton-under-Heywood, Earl Cathcart, Lord Dear, Lord Eames, Baroness Evans of Bowes Park, Lord Hope of Craighead, Lord Irvine of Lairg, Baroness Jay of Paddington, Lord McAvoy, Lord Mackay of Clashfern, Lord Newby, Baroness Smith of Basildon, Lord Stoneham of Droxford, Lord Taylor of Holbeach, Viscount Ullswater

Copy to (via E-Mail): Lord McFall of Alcluith, the Lord Speaker

15/11/2018

Dear Member of the Committee for Privileges and Conduct,

Peerage claim in respect of a Scottish feudal barony

Introduction - Request

1. I am writing to you as a member of the House of Lords and as a member of the Committee for Privileges and Conduct ('the Committee') to ask you to take the appropriate steps, either individually or acting with others, to ensure that the attached peerage claim is properly considered by the House and the Committee in accordance with current law and established procedures. Over the centuries, there have been numerous peerage claims in respect of feudal baronies, including Arundel (1433), Abergavenny (1604), Fitzwalter (1670), Somerville (1723), Sutherland (1771), Berkeley (1861) and Mar (1867), but this is, to my knowledge, the first time that such a claim has been blocked from even being put before the House of Lords. Am I supposed to say 'Well done'?
2. I ask for nothing more than that my peerage claim should be properly considered; that is, due process. I appeal to your sense of justice and to your sense of honour and remind you of my fundamental constitutional right to petition Parliament under both Magna Carta and the Bill of Rights (see paras. 112-116). Further, Article 6 (Right to a fair trial) of the European Convention on Human Rights (ECHR) provides that everyone has the right to have their civil rights and obligations determined by *'an independent and impartial tribunal established by law'*. Given that the House of Lords has exclusive jurisdiction in peerage claims, if my peerage claim is prevented from being put before the House of Lords, how can I have my claim (to be recognised as a peer) determined by *'an independent and impartial tribunal established by law*'? Lord McFall of Alcluith, who determined my claim (ruled that I am not a peer), certainly doesn't constitute *'an independent and impartial tribunal established by law*'. Are peerage claims somehow exempted from Article 6 ECHR? I don't think so. This is really the only argument you need to know.
3. Further, Erskine May (*'A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament*', 1851, Ch. 19, p. 388), and I assume the current version says the same, says that petitions can be sent to members of either House. Given the constitutional right to petition Parliament, it necessarily follows that

an individual member of a House (Commons or Lords) in receipt of a petition must present that petition to the relevant House, otherwise he is blocking a person trying to exercise that right. Erskine May says (p. 388) that *'it is the duty of members to read petitions which are sent to them, before they are offered to the house, and to see that no flagrant violation of any of these rules is apparent on the face of them.'* Clearly, a member cannot have a duty to read a petition if he has no duty to do anything after he has read it, because that would make reading a petition pointless; the duty must continue until the matter is dealt with or passed to some appropriate person or body who can deal with the matter. Further, if a member can refuse to present a petition, other possibly than where it breaches the rules referred to, then all members can, which would negate the right to petition Parliament in the first place. <u>If a right is subject to someone else's discretion, then it is not a right, it is a favour, and the petitioner is not a petitioner, he's a supplicant. Given that a right is, by definition, something that cannot be denied to a qualifying person, if the thing can be denied to a qualifying person then it is not a right.</u> A right to do something necessarily implies a right to invoke a (necessarily mandatory) process by which that right can be exercised, otherwise the right is nugatory (like telling someone he can drive your car but not handing over the keys to the car). It follows that a member of either House can no more refuse to present a petition than a member of court staff can refuse to process a valid application made to the court. A member most certainly cannot refuse to present a petition just because he disagrees with it, even if some expert/authority backs him up in his views. Apart from anything else, it denies every other member of the House an opportunity to express their opinion about the petition, which means that refusing to present a petition to the House is a slap in the face for every other member of the House (and, in fact, a contempt of Parliament because it usurps the jurisdiction of the House). Is this too complicated for Lord McFall of Alcluith to understand?

4. I particularly draw your attention to the question in bold in paragraph 89.

5. I will be grateful if you could acknowledge receipt of this letter and tell me what you propose to do in response to it. A reply by E-Mail will be acceptable.

<u>Introduction - Summary of the problem</u>

6. The main problem is that a single member of the House of Lords, Lord McFall of Alcluith, has taken it upon himself to block a petition addressed to the House of Lords (not to him), <u>in clear breach of my fundamental constitutional right to petition Parliament (see paras. 112-116).</u> I sent my petition to him because he has been identified as the appropriate person by the Crown Office, as confirmed by the High Court in Mereworth v. Ministry of Justice [2011] EWHC 1589 (Ch).

7. Further, he appears to have done this on the basis of what is nothing more than an informal and wholly unsubstantiated 'opinion' (in quote marks because it is not even an opinion; it is just an unsubstantiated assertion) from the Lord Lyon (see attached) to the effect that a Scottish feudal or territorial barony is not and never was a peerage, which 'opinion' is flatly contradicted by several institutional writers, including the greatest Scottish jurist, Lord Stair, in his *'The Institutions of the Law of Scotland'* and Lord Bankton in his *'An Institute of the Laws of Scotland'* (see below), both regarded as authoritative by Scottish courts of law. By way of example, John Riddell, in his *'Inquiry into the Law and Practice in Scottish Peerages'* (Thomas Clark, Edinburgh, 1842, Vol. I, p. 5), while showing

that Scottish peerage claims were decided by the Court of Session, says: *'In feudal times, when peerages were connected with the fief, they were amenable to the civil court.'* The words *'when peerages were connected with the fief'* mean 'when peerages were attached to a designated area of land'; in other words, were territorial.

8. Given the undeniable fact that Scottish feudal barons most certainly were peers, the question becomes 'How and when did they cease to be peers?' The Lord Lyon does not want to answer that question - given that authoritative sources (institutional writers) say that they never did cease to be peers, as explained in my petition (petition para. 41). The short way to avoid answering the question is to simply deny its premise (that feudal barons were peers), which is what the Lord Lyon did. So, it has taken about three sentences to prove that the Lord Lyon lied. This is fraud of course, as well as an attempt to pervert the course of justice and misconduct in public office. It is a criminal offence. So, what am I supposed to do about it? Ignore it? Why? More importantly, what are you going to do about it? Even more importantly, how is it possible that those people who rejected my petition, where all this is made crystal clear (including Ed Ollard, the Clerk of the Parliaments, Lord McFall of Alcluith, Chairman of the Committee for Privileges, Lord Fowler, Speaker of the House of Lords, and David Roy Lidington MP, the Lord Chancellor), did not appreciate that fact (that the Lord Lyon was lying)? Well, the short answer is, I believe, that the Lord Lyon gave them what they wanted; a means of dismissing my petition. If there is any comeback, all they have to do is to say: 'Well, I relied on the Lord Lyon's opinion.' But is that good enough? Was it reasonable to do so when a reading of my petition (and I presume that they read my petition) would have told them the truth in a matter of minutes, and bearing in mind that the Lord Lyon gave no reasons for, and cited no authorities supporting, his assertions? Should this fact have put them on enquiry perhaps? The Lord Lyon was asked to give his opinion on my petition and yet he did not assess any of the arguments advanced in my petition. How can an opinion be considered adequate in such circumstances? And anyone reading the Lord Lyon's letter would have appreciated the position because he says he has received the petition, and therefore he is saying that he has read it, but there is absolutely nothing along the lines of 'The petitioner argues x but he is wrong because of y.' Clearly, in claiming that a feudal barony is a peerage I must explain why; that is, cite authorities and put forward arguments. But the Lord Lyon dealt with none of these; he simply dismissed my entire petition with the assertion that feudal baronies have never been understood to be part of the peerage. So, was their conduct '*an honest attempt to perform the functions of the office'*, which is the yardstick for the common law offence of misconduct in public office (Attorney General's Reference No. 3 of 2003 [2004] EWCA Crim 868 at 51 - see below)? Given that an honest attempt must have, in this case, involved reading my petition, the answer must be 'No'. So, they either read my petition and decided to ignore what it said (including the authoritative sources I cite), or they did not read my petition at all. Either one is sufficient to constitute the offence. And, of course, even if the Lord Lyon is right, I still have a fundamental constitutional right, and a right under Article 6 ECHR (Right to a fair trial), to have the matter determined in a court of law (the House of Lords being the only court to have jurisdiction in this matter) and not by a public official/office holder, however grand his title. In other words, even if, having read my petition, they were genuinely convinced that the Lord Lyon was right, they were <u>still</u> wrong to act as they did - and they

knew it. So, there we go; the Lord Lyon, the Lord Chancellor, the Lord Speaker, the Chairman of the Committee for Privileges and Conduct, the Clerk of the Parliaments. All it would have taken was one ounce of integrity amongst this sorry shower of moral pygmies, but nothing, nil, nix, zero, zip, zilch, nada, rien de tout, diddly-squat.

9. Furthermore, the Lord Lyon's advice was sought on the basis that this was required by the Royal Warrant of 1/6/2004, which set up the Roll of the Peerage. But this is wrong, the Royal Warrant requires no such thing, which means that the very basis on which the Lord Lyon's opinion was sought in the first place was 'mistaken' (there was no mistake of course - see the letter of the Clerk to the Crown in Chancery to me dated 4/12/2017 and my reply to him of 9/12/2017 in the Appendix).

10. I might also point out that I cannot be claiming in respect of a feudal barony because feudal baronies were abolished by the Abolition of Feudal Tenure etc. (Scotland) Act 2000. A slight oversight.

11. The blocking of my petition on the basis of a single informal 'opinion' is to be contrasted with the fact that a petition very similar to mine, but relating to an English feudal barony rather than a Scottish one, the Berkeley Peerage Case of 1858-1861, was put before the House of Lords and then referred to the Committee for Privileges, which considered it for three years, in spite of the fact that there had been a previous judicial determination (by the Privy Council) to the effect that an English feudal barony is not a peerage (The Fitzwalter Peerage Case 1670). In short, in my case, an informal opinion was enough to block my petition from even being put before the House of Lords, whereas, in the Berkeley Peerage Case, an actual judicial determination was not enough; the House of Lords acknowledged that the petitioner had a right to have his petition heard and considered. A decision by the Committee for Privileges is not a binding precedent in the same way as the judgement of a court, even with respect to a later claim by the same person to the same title, so how can an informal opinion be treated, in effect, as a binding precedent to the extent of permanently blocking any claim, not just with respect to the same title but with respect to any claim of the same type (that is, concerning a Scottish feudal barony)? And if the opinion does not block all claims, how can it block one (mine)?

12. So, not only does Lord McFall of Alcluith have no authority to block (in effect determine or rule upon) my petition, he has no good reason for doing so even if he has the authority. Note that in the Berkeley Peerage case the House of Lords ruled that there was a peerage based on an English feudal barony; it had merely been converted into a barony by writ by the Tenures Abolition Act 1660 (R. P. Gadd, *Peerage Law*, ISCA Publishing, Bristol, 1985, p. 21). On this basis, it cannot be said that my claim is hopeless, given that Scottish feudal baronies were subject to an identical process under the Abolition of Feudal Tenure etc. (Scotland) Act 2000. In short, if English feudal baronies were converted into baronies by writ by the Tenures Abolition Act 1660, were not Scottish feudal baronies converted into baronies by writ by the Abolition of Feudal Tenure etc. (Scotland) Act 2000? Since the Tenures Abolition Act 1660 did not (and could not) create any peerages, English feudal baronies must have been peerages all along.* Logically, the same applies to Scottish feudal baronies, since they were identical in all important respects.

*William Cruise, *'A Treatise on the Origin and Nature of Dignities or Titles of Honour'*, Joseph Butterworth & Son, London, 1823, p. 40, says (dealing with England): *'All the proprietors of these baronial estates, or land baronies, were entitled to sit in the Magnum Consilium, or Parliament, till the reign of Henry III, who made a law, which has been already stated, that no person should come to parliament without a writ of summons from the king; and though it does not appear that this law applied to the principal barons, yet it is probable that the crown frequently availed itself of it, by omitting to summon the lesser barons, or those who acquired estates held per baroniam.'*

Where Cruise says that the law of Henry III has already been stated, he is referring to p. 15 where he says (my emphasis): *'yet, about this time, some new law is said to have been made, by which it was established that no person, though possessed of a barony , should come to parliament without being expressly and particularly summoned by the king's writ.'* So, Cruise acknowledges that the feudal barons were peers, in that they were nobles who had the right to be summoned to Parliament, but he then says that it appears that a law enacted in the reign of Henry III provided that no baron should come to Parliament unless summoned by writ. Cruise refers to Camden, in the preface to his *Britannia***, as the source of his information, but notes that Selden *'gives little credit to this* [Camden's] *narrative'*; that is, Selden questions whether such a law ever was passed in the reign of Henry III.

The truth of the matter is that no such law has ever been found, as stated by Henry Hallam, '*Middle Ages*', John Murray, London, 1901, Vol. III, p. 7. In the Berkeley Peerage (1858-1861), VIII, HLC, 44, it was said: *'In Matthew Paris (Hist. Angl. 639-640, Edit. Lond. 1640) is the statement of what occurred in the 39 Hen. 3,* [the 39th year of the reign of Henry III] *when the King having urgently demanded an aid from the Peers then present in Parliament, the answer was, that all the Barons this time not having been called to Parliament, the Peers were not, in their absence, willing to grant the aid required.'* Such conduct is hardly consistent with a law which prevented barons from attending Parliament unless summoned, because the other peers were likely to simply refuse to conduct business in the absence of some of their number - and did so in this instance.

What are we left with? We are left with the fact that the feudal barons had the right and duty to attend Parliament as nobles (by which they were peers), and the fact that this right has never provably been abrogated. It has fallen into disuse certainly, but that is not the point; we are not talking about disuse but whether the legal right has been abrogated, either expressly or by necessary implication - which it hasn't (the right was specifically preserved by the Tenures Abolition Act 1660). It follows that the right of English feudal barons to attend Parliament as nobles still survives (which is what the Berkeley Peerage Case of 1858-1861 confirmed of course). As you will see, the same arguments apply in Scotland; namely, that the right existed and has never been abrogated.

***'Certes, in those daies Henrie the Third reckoned in England 150 Baronies. And heereupon it is that in all the Charters and Histories of that age all noble men in maner be called Barons: and verily that title then was right honorable, and under the terme of Baronage all the superior states of the kingdome, as Dukes, Marquesses, Earles and Barons, in some sort were comprised. But it attained to the highest pitch of honor ever since that King Henrie the Third, out of so great a*

number, which was seditious and turbulent, called the very best by writ or summon unto the high Court of Parlament. For he (out of a writer I speake of good antiquity) after many troubles and enormous vexations betweene the King himselfe and Simon of Mont-fort with other Barons <raised,> and after appeased, did decree and ordaine that all those Earles and Barons of the Realme of England unto whom the King himselfe vouchsafed to direct his writs of Summons, should come unto his Parlament, and none others.' (William Camden, '*Britannia', The Orders and Degrees of England, http://www.philological.bham.ac.uk/cambrit/britdiveng.html#ord1*).

13. In addition, my petition contains pleas which I am asking the House of Lords to consider and rule upon even if my barony is not a peerage. An example is the fact that Article 22 of the Treaty of Union protects heritable jurisdictions as rights of property as they were in 1707. Now the Barony of Mordington is a regality (county palatine), which means that in 1707 it enjoyed the entire powers of the Crown (including complete criminal and civil jurisdiction, *regalia majora* and *regalia minora*, excluding only the right to try treason), including, for instance, *bona vacantia*, the right to the assets of intestate estates and dissolved businesses with no owners. The Duchy of Lancaster, which is a county palatine, the English equivalent of a regality, earns millions of pounds a year from its right of *bona vacantia* (£2.25m in the year to 31/3/2018). Since a barony is impartible (in law, it cannot be broken up - it is a *unum quid* or 'single thing' in law) the powers and prerogatives are parcel with the jurisdiction. In other words, if the jurisdiction is protected, so are the powers and prerogatives because they cannot be separated.

14. So, the question arises as to what these powers and prerogatives were and whether they continue to be protected today, given that the Union with Scotland Act 1706, including Article 22, is still in force. In other words, there is a constitutional Act of Parliament on the statute book which protects these rights to this day; these rights being similar to the rights and prerogatives enjoyed by the Duchy of Lancaster and the Duchy of Cornwall, which are also protected to this day (though not by the Treaty of Union).

15. The House of Lords appears to have jurisdiction in this matter because Halsbury's '*The Laws of England*' (Butterworth & Co., London, 1909, Vol. 9, p. 21), which deals with the jurisdiction of the High Court of Parliament, includes the heading *'Claims to peerages and offices of honour'*, such as the office of Lord Great Chamberlain which the House of Lords heard in 1781 and 1902 (see below). So, even if the Barony of Mordington is not a peerage, the House of Lords would still seem to have jurisdiction because the Barony of Mordington is a title/office of honour and I am claiming rights associated with that title/office of honour.

16. For confirmation that feudal baronies are titles of honour, as well as being dignities, see William Cruise, *'A Treatise on the Origin and Nature of Dignities or Titles of Honour'*, Joseph Butterworth & Son, London, 1823. A feudal barony is an office because it exercised a jurisdiction (performed a function) as a court of law until the Abolition of Feudal Tenure etc. (Scotland) Act 2000 came into effect in 2004, and that Act did not affect the status of feudal baronies as dignities or offices. s.63 Abolition of Feudal Tenure etc. (Scotland) Act 2000 states: *'nothing in this Act affects the dignity of baron or any other dignity or office (whether or not of feudal origin).*'

17. What this means is that even if it was right to dismiss my claim to a peerage, it was not right to dismiss all the other elements of my petition which do not depend on my barony being a peerage.

18. William Cruise, *'A Treatise on the Origin and Nature of Dignities or Titles of Honour'*, Joseph Butterworth & Son, London, 1823, p. 258, writes of the claim of James Percy to the Earldom of Northumberland in 1685 (my emphasis): *'Soon after a packet of papers was found on the table of the house, subscribed Percie's petition of complaint, which was referred to the committee of privileges to open the same.'* This petition was later rejected as groundless, false and scandalous*, but only after the Committee had heard counsel on behalf of James Percy, who was made to appear in Westminster Hall wearing a sign which said: *'The false and impudent pretender to the Earldom of Northumberland'*. So, in those days, the House of Lords insisted on due process even for a petition left anonymously on the table of the House, and not formally presented to the House. Contrast this with the treatment of my petition.

    *Interestingly, Lord Chief Justice Hale is reported to have said to the Earl of Shaftesbury: *'I verily believe he [the claimant] has as much right to the Earldom of Northumberland as I have to this coach and horses which I have bought and paid for.'* (*Note & Queries*, 5th S. II, Oct. 3, '74, p. 275). In open court, during one of the related cases, Hale said *'That the claimant has proved himself a true Percy, by father, mother, grandfather and grandmother, and of the blood and family of the Percies, Earls of Northumberland; and that he did verily believe the claimant was cousin and next male heir to Jocelyn Percy, Earl of Northumberland: only he was afraid he had taken his descent a little too low.'* (Sir Egerton Brydges, *Restituta*, T. Bensley, London, 1815, Vol. III, p. 523). This looks like another complete mess created by the Committee for Privileges. Note that in 1672 the dowager countess of Northumberland petitioned the House of Lords about another person (James Percy) falsely assuming a title and this was referred to the Committee for Privileges (William Cruise, *'A Treatise on the Origin and Nature of Dignities or Titles of Honour'*, Joseph Butterworth & Son, London, 1823, p. 257). This shows that a person can petition the House about someone else falsely using a title or falsely sitting in the House of Lords.

Introduction - Forestalling the inevitable hypocritical condemnation

19. Firstly, and only in self-defence, let me stick a pin in any tendency to pompous indignation, both in relation to titles and to feudalism. I will wager that every single member of the House of Lords loves being a lord or lady, excluding the bishops of course (but they are Lords of Parliament, not peers). Every one of them could easily have refused the offer of a life peerage or disclaimed a hereditary peerage if they really disagreed with the idea of titles and an appointed second chamber, but they didn't. Even the so-called socialists love their titles; in fact, the socialists more than anyone else (Tony Blair created peers at three times the rate of Margaret Thatcher and only a tiny handful refused a peerage). Of course, to a man/woman they say: 'Naturally, I rather disapprove of titles and have no interest in having one myself. I reluctantly accepted a peerage so that I could continue selflessly serving the nation.' To which the response is 'Yeah, yeah, yeah.' or, in modern parlance, 'Woteva'.

20. Also, when the Supreme Court was established in 2009 and it took over the judicial functions of the House of Lords, the so-called 'law lords' lobbied like mad behind the scenes to be able to keep their titles; they wanted to be 'Lord

Snoot of Snootbury' or 'Lady Knickers of Silky-under-Wear' (though their titles are not real titles at all, being mere courtesy titles), not just a measly 'Justice of the Supreme Court'. s.23(5) Constitutional Reform Act 2005 says: *'The judges other than the President and Deputy President are to be styled "Justices of the Supreme Court"'*. There is nothing in the Act about the titles of 'Lord' and 'Lady', which were granted by Royal Warrant in 2011 after 'representations' had been made ('Please, please, please, Your Majesty! Don't let them take away our titles!). This shows that titles are important to them even when they don't carry the right to sit and vote in the House of Lords.

21. So, please, no manufactured disapproval, no getting on your high horse, no sticking your nose in the air, no looking askance, no tut-tutting, no snide mockery, no muttering through gritted teeth. Admit it, your lordship, you love being a 'nob' (short for 'noble'). But don't worry, your lordship, this little human weakness of yours is perfectly normal. I say this just to bring you down a peg or two. You love your title; I love my title. I can guess why you love your title, but I love my title (which I never use) because it is a symbol of something that I would protect and preserve; something noble and ancient; representing a system (the feudal system) which was an honourable bond between lord and vassal, of protection and justice on one side and loyalty and service on the other (if you have a mortgage you are a vassal on much harsher terms that any feudal peasant - and, on top of that, you pay about 40% of your income to the government, something that would have caused an immediate revolution in feudal times), which worked for most of the people most of the time, and which, in Scotland at least, survived for 900 years for precisely that reason. By comparison, Soviet Communism lasted less than 100 years. Further, Soviet Communism fell because it just didn't work. Feudalism never failed; it was abolished not because it didn't work but because the socialists had a massive chip on their collective shoulder about the idea of 'superiors' and 'vassals'. In short, it is a precious inheritance. So, to me my title represents my country and its way of life; its history, its culture, its religion, its laws, its institutions, its people. But, above all, the essence of what makes us (or ought to make us) what we are; our sense of decency and fair play, of doing unto others only what we would do unto ourselves, which is, of course, the essence of the Christian message on which our civilization is built ('Thou shalt love thy neighbour as thyself.'). The Golden Rule.

    "I have laboured to make a covenant with myself that affection may not press upon judgement, for I suppose there is no man that hath any apprehension of gentry or nobleness, but his affection stands to the continuance of so noble a name and house, and would take hold of a twig or a twine thread to uphold it. And yet, Time hath his revolutions; there must be a period and an end to all things temporal - finis rerum - an end of names and dignities and whatsoever is terrene, and why not of de Vere? For where is Bohun? Where is Mowbray? Where is Mortimer? Nay, which is more and most of all, where is Plantagenet? They are entombed in the urns and sepulchres of mortality. And yet let the name and dignity of De Vere stand so long as it pleaseth God. " Sir Ranulph Crewe, Lord Chief Justice, in the Oxford Peerage Case (1625), quoted in William Cruise, *'A Treatise on the Origin and Nature of Dignities or Titles of Honour'*, Joseph Butterworth & Son, London, 1823, p. 102.

Introduction - What the petition is really about (The rule of law)

22. But of course, though I have a deep attachment to my title, it is not really what my peerage claim is about at all. No, my peerage claim is about (has come to be about, though not through my actions) something far more important, beside which my title is nothing - totally insignificant. That something is the rule of law; the fact that the people involved in my petition refuse to acknowledge the rule of law and the fact that I insist that they shall. My peerage claim is a good vehicle for this, because it is one where people like them feel free to bend the rules, deny me due process and tell me, in so many words, to get stuffed. So, the matter is essentially trivial (a title) but the principle that is at stake could not be more important. You see, once you have started to ignore the rule of law in small matters, you inevitably begin to ignore the rule of law in increasingly important matters.

    'Men and women who sell their birth-right for a mess of pottage will tell you that their demise began with something small, with some seemingly insignificant breach of integrity that escalated. The little things do matter. It is not possible to profess righteousness while flirting with sin.' - Sheri L. Dew, American author and publisher.

    People get used to it. Perhaps they already have. That way absolute corruption lies, as history shows us. For instance, when did you last believe anything said by a government spokesman? Personally, I can't remember the last time. They lie directly to the entire nation about issues of the highest national importance (such as Brexit, for instance) - over and over again. So, look at it this way; in pursuing my claim, I am trying to protect them from what they will become if I fail - completely corrupt. And not just them personally, but the institutions they are part of. The point being that, as a citizen, they are my institutions, not theirs. They are, after all, public servants.

    That's OK. No need to thank me; it's all part of the service when you are a *'verray parfit, gentil knyght'* who loves *'chivalrie, trouthe and honour, fredom and curteisie'*. And I do. (Have a laugh. Ridiculous isn't it? But it is such sentiments which make people, though not them of course, join the armed forces and risk their lives for their country.) The unfortunate corollary of this is that I absolutely despise corrupt people, and I despise corrupt public officeholders more than anything else. They live a lie, pretending to serve others while only serving themselves. They are liars, cowards and bullies, all at the same time, and nothing is more deserving of contempt. Personally, I would rather avoid any sort of contact with such people, but you can't drain the swamp without getting up to your neck in filth*. So here I am - 'up to my neck in the brown stuff'. It's nothing personal; I would feel the same about anyone who acted in that way.

    **'A life based on corruption is "varnished putrefaction", the Pope* [Pope Francis] *said.'* (*'Pope Francis: corrupt should be tied to a rock and thrown into the sea'*, Daily Telegraph, 11/11/2013, http://www.telegraph.co.uk/news/worldnews/europe/italy/10441960/Pope-Francis-corrupt-should-be-tied-to-a-rock-and-thrown-into-the-sea.html)

23. *'It is essential that the Law Officers are champions of the rule of law within government, and it is equally important that you are given reassurance that we fulfil that role.'* (The Advocate General for Scotland, The Rt Hon Lord Keen of Elie QC, keynote address at the Scottish Public Law Group (SPLG) annual

conference in Edinburgh, 11/6/2018). I couldn't have put it better myself. This is the man who is supposed to be advising the government on my peerage claim (see appendix), but I haven't heard from him; not a peep. So, it's all words, just words.

24. Among these corrupt public officials is the Lord Chancellor (and Keeper of the Queen's Conscience, no less). Now the Lord Chancellor (then David Roy Lidington MP, who claimed MPs expenses for dry cleaning, toothpaste, shower gel, body spray and vitamin supplements; claiming £115,891 in expenses in one year, almost double his salary - this is fraud of course) rejected my petition on the basis of the Lord Lyon's opinion to the effect that feudal baronies are not and never have been peerages. OK then. But my petition, which was put before the Lord Chancellor, as confirmed by the Clerk of the Crown in Chancery in a letter to me dated 4/12/2017 (and which he must have read, unless he rejected my petition without reading it*), reveals that there are currently four Scottish feudal baronies on the Roll of the Peerage, including the Dukedom (Duchy) of Rothesay, which is held by the Prince of Wales. There can be no dispute about the fact that these titles are feudal baronies because I relied on (and cited) the *'Complete Peerage'*, the most authoritative work on the British peerage. This means that the Lord Chancellor is aware, as the 'keeper' of (person responsible for maintaining) the Roll of the Peerage, as per the Royal Warrant of 1/6/2004, that there are entries on the Roll which shouldn't be there (according to the Lord Lyon). Clearly, in such circumstances he has a duty to ensure that such entries are removed. And yet the Lord Chancellor has done precisely nothing. Why? He cannot pretend to be unaware of his duties in respect of the Roll. He cannot, if he read my petition, be unaware of the incorrect entries on the Roll. Therefore, the only possible conclusion is that he is deliberately failing to do his legal duty as Lord Chancellor. This is a criminal offence (misconduct in public office at least). But this is not really the point. No, the point is that the above shows that the Lord Chancellor is dishonest; he cannot be trusted to do his job. The man ultimately responsible for our legal system, as Secretary of State for Justice, does not believe in the rule of law and will ignore it when he thinks he can get away with it. I have just proved that. He has failed the test. Will you do the same?

    *In fact, it would seem that the Lord Chancellor cannot have read my petition because, had he done so, he would have seen not only that the Lord Lyon's opinion, which is not backed by any authorities, is directly contradicted by the highest Scottish legal authorities (Lord Stair and Lord Bankton, for instance, as explained below), but also that there are currently four Scottish feudal baronies on the Roll of the Peerage. In such circumstances, he surely had no option but to refer my petition to the House of Lords. You cannot possibly rule that a feudal barony is not a peerage when there are already four feudal baronies recorded on the Roll as peerages. The only other option is that the Lord Chancellor did read my petition and was horrified by the potential ramifications (such as that the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is a nullity under s.29(1) Scotland Act 1998; that is, that the feudal system in Scotland was not, in fact, abolished at all) and simply said: 'We must prevent this petition from even getting off the ground.' What has happened to my petition would be entirely consistent with such a chain of events. It has been blocked in every possible way, even to the extent of the House of Lords Enquiry Service refusing to answer general queries (see appendix).

Introduction - Legal duty of committee members

25. I believe that, as a member of the Committee, you have a duty to ensure that the business of the Committee is properly conducted and that nothing is prevented from being considered by the Committee which properly falls within the jurisdiction of the Committee. The backstop position is that it is unlawful (being against the rules of natural justice) for the holder of a public office to exercise a power that he has in an unreasonable manner, and that it is also unlawful for the holder of a public office unreasonably to refuse to exercise a power that he has; in other words, the holder of a power has a duty to exercise that power, unless no situation ever arises requiring him to do so. So, the questions are (1) whether the person is the holder of a public office, and (2) whether he has the power to do the relevant thing, which, in this case (see para. 1), you undoubtedly do. What I mean by this is that if you, as a member of the Committee, become aware of some wrongful act or omission on the part of the Chairman of the Committee, and in relation to a matter which is clearly within the jurisdiction of the Committee, then you have a clear duty to act. This applies to every member of the House of Lords in relation to House of Lords matters, not just to Committee members in relation to Committee matters.

26. I use the word 'jurisdiction' because a peerage claim involves the determination by the Committee of a legal right (the right to real property in the form of a peerage), which means that the Committee considers a peerage claim in a judicial capacity; that is, as a court of law. John Riddell, in his *'Inquiry into the Law and Practice in Scottish Peerages'* (Thomas Clark, Edinburgh, 1842, Vol. I, p. x) says: *'as late as 1835, Lord Brougham* [Lord Chancellor 1830-1834]*, in the Polwarth claim, forcibly impressed that, "we", the Committee for Privileges, "are sitting in a Scottish court, as a Court of Appeal"* […].'

27. We are therefore dealing with judicial proceedings and any acts or failures to act must be considered in that context. For instance, any attempt to interfere in or obstruct such proceedings (prevent the matter from being properly considered), whether by a positive act or by a failure to act (see next paragraph), would amount to an attempt to pervert the course of justice, as well as misconduct in public office (for which see below). I point this out to make sure that you fully understand the legal situation; it is not meant to be a threat.

28. In R. v. Miller [1982] UKHL 6 Lord Diplock said: *'I venture to think that the habit of lawyers to talk of "actus reus", suggestive as it is of action rather than inaction, is responsible for any erroneous notion that failure to act cannot give rise to criminal liability in English law.'*

29. In Frank Houlgate Investment Company Limited v. Biggart Baillie LLP [2013] CSOH 80 it was said at 43 (my emphasis):

    'In MacDonald's Criminal Law (5th ed.) at p. 8, the author wrote of circumstances in which a failure to intervene could make a party an accessory to a crime. He stated:

    "The situation in which a strong case would be required to justify conviction is that of a person present at the perpetration of an offence not interfering to prevent it. This alone, without proof of previous concert or concurrence at the time, might or might not justify a conviction according to circumstances. If a person stood by and witnessed, without remonstrance, the protracted efforts of

one individual to ravish a woman, or to drown a person, or to throw him over a precipice, it would be difficult to draw a distinction between such a case and one of direct participation. Perhaps the strongest example that can be imagined is that of an official standing by and not doing his duty, and so allowing a breach of the law."'

For 'an official' read 'the holder of a public office'.

30. Clause 17(1) Draft Criminal Code Bill (Law Commission's Report No. 177, 1989) states that *'a person causes a result... when... (b) he omits to do an act which might prevent its occurrence and which he is under a duty to do according to the law relating to the offence'*. See also the US case Morrison v. Coddington, 662 P. 2d. 155, 135 Ariz. 480 (1983) where it was stated that *'Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth.'* In general terms, it follows that, in law, a person causes a result when he fails to do something which he has a legal duty to do and which result might have been prevented had he done that thing, and that fraud can result from a person not speaking when he has a duty to do so (speak the truth). This is relevant to the opinion of the Lord Lyon dealt with below.

31. With regard to the question of whether the Lord Speaker, the Chairman of the Committee for Privileges and Conduct and members of that Committee are holders of a public office, this is covered by the general discussion contained in the Law Commission's paper: *'Misconduct in Public Office, Issues Paper 1: The Current Law'*, 2016, pp. 12-33, which says at 2.19: *'Whitaker contains the most often cited common law definition of a public officer: A public officer is an officer who discharges any duty in the discharge of which the public are interested.'*

32. At 2.28 it says (my emphasis): *'Returning to the question of defining a public office, Lord Justice Leveson said the proper approach involved asking three questions: First, what is the position held? Second, what is the nature of the duties undertaken by the employee or officer in that position? Third, does the fulfilment of those duties represent the fulfilment of one of the responsibilities of government such that the public have a significant interest in the discharge of that duty which is additional to or beyond an interest in anyone who might be directly affected by a serious failure in the performance of that duty? If the answer to this last question is "yes", the relevant employee or officer is acting as a public officer; if "no", he or she is not acting as a public officer.'* With regard to the third question, it is relevant that consideration of a peerage claim is a judicial process, which means that, to all intents and purposes, the members of the Committee are acting as judges, and judges are most certainly holders of a public office.

Background

33. I was recognised as Baron of Mordington, a Scottish feudal barony, by interlocutor (decree) of the Court of the Lord Lyon dated 11/11/2004 and matriculated arms at the Lyon Office on 30/10/2007, which is the date on the grant of arms recognising me as Baron of Mordington (by then a personal title following the abolition of the feudal system in Scotland on 28/11/2004) with the appropriate baronial additaments (see attached). In accordance with official guidance*, I initially submitted this petition to the Crown Office in early 2016, but, over time, it became apparent that they were simply stonewalling me. In early 2018 (after the Crown Office has made no progress in terms of obtaining proper legal advice for almost two years) I therefore submitted my petition

(which is addressed to the House of Lords) to Lord McFall of Alcluith as Chairman of the Committee for Privileges and Conduct.

*'*Office and Court of the Lord Lyon - Guidance Note. No. 1, Succession to a Scottish Peerage or Nova Scotian Baronetcy or to a Peerage or Baronetcy of Great Britain or the United Kingdom with a Scottish Territorial designation, Matriculations of Arms with additaments appropriate to a Peerage or Baronetcy*', para. 5'

34. I did this in accordance with Mereworth v. Ministry of Justice [2011] EWHC 1589 (Ch) (http://www.bailii.org/ew/cases/EWHC/Ch/2011/1589.html), a case in the High Court, where it was said at 12:

'Lord Lyndhurst also asserted, in clear terms, the right of the Committee to decide who was entitled to receive the Writ of Summons and, as indicated, he said that if a person is entitled to a writ, but the Crown does not issue one, then his remedy is to petition the House. That is the advice that the Crown Office gave Lord Mereworth in the present case and, in my judgment, that advice was correct. If the Committee for Privileges has jurisdiction, it seems to me that must be an exclusive jurisdiction to decide upon entitlement to sit and vote in the House, otherwise there would be a risk of conflicting decisions: on the one hand, those of the courts and, on the other, those of the Committee for Privileges which would not be conducive to the separation of powers inherent in our constitution.'

35. With regard to the advice of the Crown Office referred to, it was said at 3:

'The response of the Crown Office of the House of Lords was that the result of section 1 of the House of Lords Act 1999 was that Lord Mereworth was not entitled to a Writ of Summons because he was a hereditary peer. Lord Mereworth persisted with his request and by letter of 22 October 2010, the Head of the Crown Office said that: "If you consider that the Crown Office has withheld a writ of summons which you are entitled to receive, then, given that this is a matter relating to the membership of the House of Lords, you should contact the Chairman of the Committee for Privileges and Conduct, House of Lords, London SW1A OPW."'

36. It is clear therefore that:

    a. If the Crown Office improperly refuses to issue a writ of summons, or if it improperly refuses to process a peerage claim at all, the proper procedure is to petition the House of Lords (via the Chairman of the Committee). If a petition to the House should, as the Crown Office said, go via the Chairman of the Committee, it follows that the Chairman of the Committee has a duty to place such a petition before the House, given that there is no point is submitting a petition to the Chairman of the Committee if he has no duty to place such a petition before the House.

    b. The Committee has exclusive jurisdiction to determine a peerage claim (decide upon entitlement to sit and vote - or, after 1999, entitlement to be put forward for election to a seat in the House of Lords or to simply be recorded as a peer on the Roll of the Peerage), although the Committee does not, in fact, make a determination; it makes a recommendation to the House of Lords and it is the House of Lords which makes the decision as to whether or not to make a

recommendation to the monarch, who makes the actual decision. A petition is addressed to the House, not the Committee.

Lord McFall of Alcluith's response to my petition

37. In an E-Mail to me dated 10/1/2018, Lord McFall of Alcluith wrote:

    'Having reviewed the case, I am satisfied that because your feudal barony is not an hereditary peerage, neither the jurisdiction nor the standing orders of the House of Lords are engaged. The Clerk of the Parliaments therefore acted properly in refusing to accept your petition. As far as the House of Lords is concerned, the matter is now closed.'

38. If the question 'Is a Scottish feudal barony a peerage?', which is the main question I am asking the House of Lords to resolve, does not engage the jurisdiction of the House of Lords, then which court does have jurisdiction over that question? Given that I have a fundamental constitutional right to go to a court to have my rights and liabilities determined, and that Article 6 ECHR (Right to a fair trial) says: *'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'*, how do I exercise this fundamental constitutional right and where do I find this 'independent and impartial tribunal established by law'?

39. If I was to apply to the ordinary courts to answer that question, they would say, as in Mereworth v. Ministry of Justice [2011] EWHC 1589 (Ch) (above):

    'If the Committee for Privileges has jurisdiction, it seems to me that must be an exclusive jurisdiction to decide upon entitlement to sit and vote in the House [that is, who is a peer and all related issues]*, otherwise there would be a risk of conflicting decisions: on the one hand, those of the courts and, on the other, those of the Committee for Privileges which would not be conducive to the separation of powers inherent in our constitution.'*

40. If Lord McFall of Alcluith is right, this means that the question 'Is a Scottish feudal barony a peerage?' cannot be answered by the House of Lords and it cannot be answered by the ordinary courts. So, Lord McFall of Alcluith has found a question to which there is no legal answer. It is, literally, the unanswerable question; a sort of Gordian question. This is enough to prove, on its own, that Lord McFall of Alcluith's assertion is utter nonsense. Need I go on?

41. If a body/court has already legally determined the answer to the question 'Is a Scottish feudal barony a peerage?', which body/court was it and how did it acquire jurisdiction - given that, apparently, neither the House of Lords nor any court of law has jurisdiction? And if the question has not already been answered (legally determined), how does Lord McFall of Alcluith know the legal answer - without having any legal knowledge? And if he doesn't know the legal answer, how can he dismiss my claim? I am all ears.

The Lord Lyon's opinion on my petition

42. Note that the Court of the Lord Lyon has no jurisdiction to determine a peerage claim or to rule on peerage matters generally. The Lord Lyon has jurisdiction in heraldic and related matters only. Lord Wark in the Court of Session, in Maclean of Argour v. Maclean (1941 S.C. 613, at p. 657) said: *'It was decided in the case of College of Surgeons of Edinburgh v. College of Physicians of Edinburgh (1911 S.C. 1054) that Lyon has no jurisdiction except such as is conferred by statute, or*

is vouched by the authority of an Institutional writer, or by continuous and accepted practice of the Lyon Court.'

43. With regard to feudal baronies, the Lord Lyon's jurisdiction arises only from the fact that barons are entitled to certain heraldic additaments (heraldic symbols indicating that the armiger is a baron, such as the chapeau gules furred ermine which sits, or used to sit, atop the shield - which the Lord Lyon is gradually removing) and a baron has to prove ownership of a barony in order to prove entitlement to the additaments. If the baronial right to additaments was to be done away with, the question of whether a person was or was not a baron would never come before the Lord Lyon; it would have no reason to, other than, perhaps, in relation to the question of a person's correct name or a change of name. Applying for arms with baronial additaments is a method used by barons to obtain official recognition from a Scottish court (the Court of the Lord Lyon) of ownership of a barony (obtaining a declarator of entitlement from the Court of Session is another method), but whether a barony is a peerage is another question altogether. Before the abolition of the feudal system in Scotland, ownership of a barony was recorded, as an interest in land, in the Register of Sasines, so there would have already been an official record of the ownership of a barony, but not confirmation from a Scottish court of law or a nice piece of paper you could frame and hang on a wall to alienate all your friends (a grant of arms).

44. Having jurisdiction in questions of entitlement to arms, the Lord Lyon's jurisdiction is relevant to peerage claims in that he has jurisdiction to decide who succeeds to the undifferenced arms of a deceased peer, and thus, logically, who has inherited the peerage (the same applies to the chiefships of Scottish clans). But the Lord Lyon's decision as to who is entitled to succeed to the undifferenced arms of a peer is, as far as the House of Lords is concerned, not conclusive proof of entitlement to sit and vote in the House of Lords; it is merely evidence supportive of such an entitlement. For the House of Lords to accept that the Lord Lyon's rulings in such matters are conclusive would amount to recognising that the Lord Lyon has a jurisdiction to determine peerage claims, and the House of Lords has determined that only it has the authority to determine who has a right to sit and vote in the House of Lords. The Lord Lyon's own guidance states (my emphasis): *'However, <u>the Matriculation is but evidence of the succession</u> and the person concerned cannot be officially recognised as a peer or a baronet until their name has been entered on the Roll.'* (*'Office and Court of the Lord Lyon - Guidance Note. No. 1, Succession to a Scottish Peerage or Nova Scotian Baronetcy or to a Peerage or Baronetcy of Great Britain or the United Kingdom with a Scottish Territorial designation, Matriculations of Arms with additaments appropriate to a Peerage or Baronetcy*', para. 2). In the House of Lords on 22/1/1964 it was said (my emphasis): '*The Committee are of opinion, That, proof of matriculation of arms before the Court of Lord Lyon King of Arms, being arms appropriate to a peerage in the peerage of Scotland, <u>may</u> properly be accepted as sufficient evidence of entitlement to that peerage for the purpose of issuing a writ of Summons to this House in right thereof, unless the Lord Chancellor has information which in his opinion throws doubt upon the validity of the entitlement.'* (Hansard, HL Deb 22 January 1964 vol 254 cc939). The word used is 'may', not 'must'. Theoretically, this could lead to a situation where the Lord Lyon recognises that a person has the right to the undifferenced arms of a peer, but the House of Lords decides that he is not a peer. Clearly, in

such a case the ruling of the House of Lords would prevail. In the House of Lords on 22/1/1964 Lord Saltoun said: *'As I pointed out to your Lordships when we discussed this matter before, the Petitioner, according to the terms of this recommendation, must come before the Committee with a certificate from the Court of the Lord Lyon about the matriculation of his arms, and he must bring that certificate. Therefore, in such a case, it is open to the Government of the day, whichever Government it may be, to direct the Lord Advocate to take action to reduce the decreet of the Court of the Lord Lyon; and if that is done that will make whoever petitions a commoner, and will enable him or her to pursue a political life in any direction he or she chooses.'* (Hansard, HL Deb 22 January 1964 vol 254 cc941).

45. Further, the Lord Lyon has no jurisdiction to rule generally in peerage related matters, though, he can give an informal and non-binding opinion, subject to, as a minimum, the professional undesirability of a serving judge giving an opinion on a legal matter that is not before him as a judge; that is, if he can give an opinion in such matters, he cannot do so Lord Lyon, as explained below. For the Lord Lyon to give a false impression that he has any authority to speak officially on such matters (by signing a letter as Lord Lyon, for instance) would be a serious abuse of his office and a usurpation of the jurisdiction of the House of Lords (a contempt of Parliament in fact). Any opinion of the Lord Lyon in this area should be accompanied by a caveat to the effect that he is giving an informal opinion only (and not in the capacity of Lord Lyon) and that he has no authority to make a formal ruling on such matters. If, in such circumstances, the Lord Lyon gives an opinion without giving any reasons or citing any evidence, he is merely making an unofficial and unsupported assertion which can have no weight whatsoever. Such an unofficial and unsupported assertion might be something like: *'A Scottish feudal barony is not a peerage.*' Unscrupulous people might seek to obtain such a statement from the Lord Lyon to try to dismiss a peerage claim based on possession of a Scottish feudal barony, but without disclosing that the statement is just an unofficial and informal opinion of no weight whatsoever, and without disclosing the fact that the Lord Lyon has no jurisdiction to rule generally in peerage matters. The fact that the Lord Chancellor dismissed my petition on the basis of the Lord Lyon's opinion (possibly without even reading my petition) means that the Lord Lyon has effectively determined (ruled upon) my petition. In other words, the Lord Lyon has been treated as having jurisdiction when he has no jurisdiction (if you determine a petition you are treated as having jurisdiction over that petition). On top of that, the Royal Warrant of 1/6/2004 establishing the Roll of the Peerage, gave the Lord Lyon an advisory role in setting up the Roll; it gave him authority to act in this regard. This logically means that the Lord Lyon could not have acted without such authority (Why give someone authority to do something if he already has that authority?). The Royal Warrant gave no advisory role to the Lord Lyon in keeping the Roll (adding, amending or removing entries), which can only mean that the Lord Lyon has no authority to give advice in relation to keeping the Roll. If someone had challenged the right of the Lord Lyon to give advice on the setting up of the Roll, what would he have done? He would have said that he had been authorised by the Royal Warrant. So, what if someone challenges his right to give advice on keeping the Roll? Where does he derive any authority to do such a thing? Not the Royal Warrant - and nowhere else that I can see.

46. The above (using an opinion to dismiss a petition) is what happened in my case. The Crown Office sought the Lord Lyon's views on my petition and the Lord Lyon replied to the Crown Office in a letter dated 20/3/2017 (see attached), which was addressed to Miss Elaine Chilver, Deputy Head of the Crown Office, and was on official notepaper and signed as Lord Lyon. I had to obtain this letter by a freedom of information request to the Ministry of Justice.

47. Going back in time briefly, in an E-Mail to me dated 1/7/2016, Ms. Elizabeth Roads, Lyon Clerk and Keeper of the Records wrote as follows (my emphasis):

    'Dear Mr Graham-Milne,

    Our advice is sought by the Keeper of the Roll in relation to the succession to peerages which are on the Roll. If there is no peerage of that description on the Roll we cannot indicate that it should be placed on the Roll until a successful claim has been made through the appropriate legal channels. As there is no barony of Mordington on the Roll at present you should consult your legal advisers about the correct way in which to present a claim to have a peerage of this description placed on the Roll.

    I am afraid that I cannot enter into further discussion about this matter.

    Yours sincerely

    Elizabeth Roads'

48. If the Lyon Clerk is right, then the Lord Lyon should not have written at all. If the Lord Lyon is right to have responded to the request for an opinion from the Crown Office, then the Lyon Clerk was lying - but it would not have been the first time (see my petition). One point that is relevant here is that the Lord Lyon is a judge in the Scottish legal system (in his court, the Court of the Lord Lyon, from which an appeal lies to the Court of Session). So, should a judge in the Scottish legal system ever give an opinion, even an informal one, on a legal issue which is within the exclusive jurisdiction of another court (and actually before that court in the sense that the legal process has been started by the lodging of a petition); the Committee for Privileges (House of Lords) in this case? Put this outside the current context and we ask: 'Should an active judge (one not retired) ever give an opinion on a legal issue which is not actually before him in court, bearing in mind that, if he does, that opinion might be used in another court in an attempt to sway another judge? Would this not put the other judge under pressure not to disagree with the first judge, who might be senior to him as a judge?' Further, the Lord Lyon did not give an informal opinion because he wrote on official headed paper and signed the letter as Lord Lyon. So, which official capacity was he acting in, given that he only acts in two capacities; judicial and ministerial? Acting in a judicial capacity, he generally rules on a person's right to property (a coat of arms or a barony); he acts as a judge in a court of law. Acting in a ministerial capacity, he exercises a discretion as to whether to grant arms to a petitioner for arms (he assesses whether the petitioner is a virtuous and deserving person, which today seems to mean 'not currently in prison'). He cannot have been acting in a judicial capacity because there was no formal court process and he wrote a letter, not a judgment or declarator (court order). With regard to his ministerial capacity, the Lord Lyon's exercises a part of the royal prerogative delegated to him (the prerogative to grant arms) by the Crown. Since it is not within the royal prerogative to give a legal opinion on a peerage matter, it follows that the Lord Lyon cannot have

been acting in a ministerial capacity either. So, if the Lord Lyon was not acting in either a judicial or a ministerial capacity, he must have been acting informally. Yet he signed his letter as Lord Lyon. In addition, I have already made it clear that an active judge should never give a legal opinion on a matter not before him as a judge (for the reasons I have given above). 'The Statement of Principles of Judicial Ethics for the Scottish Judiciary' (December 2016, para 7.1, http://www.scotland-judiciary.org.uk/Upload/Documents/StatementofPriciplesofJudicialEthicsrevisedDecember2016.pdf) says that a judge holding a full-time appointment should not practice law, which must include giving a legal opinion. It appears then that the Lord Lyon should never have written the letter. Further, the Lyon Clerk's statement that it is appropriate for the Lyon Office to give advice in relation to succession to a peerage that is already on the Roll is wrong. The Lyon Office cannot give such advice; it can state, as a matter of fact, whether a person has matriculated the relevant arms; that is, that there has been a judicial process in the Court of the Lord Lyon which has confirmed the right (via succession) to the arms. This is not giving advice, it is confirming the outcome of a judicial process (matriculation of arms; that is, confirming succession to arms). Some idea of the confusion concerning the Lord Lyon's roles can be gained by looking at the Lord Lyon's own information leaflet no. 4 - 'Petitions for Arms' (https://www.courtofthelordlyon.scot/index_htm_files/formsofpetition042011.pdf). This leaflet states: *'The Court of the Lord Lyon is a court of law, and applications for arms are made by a formal "Petition".'* Now, this says that application for arms are made to the court. This is wrong. Such petitions are not made to the Court of the Lord Lyon but to the Lord Lyon as representing the person of the Sovereign and exercising the royal prerogative (discretion to grant arms). There is a fundamental confusion here between the Lord Lyon's judicial role as a judge in a court of law, where he decides on questions of legal rights, and his ministerial role where he exercises a discretion to grant arms. The distinction is between what you can demand by right and what you have no right to demand, but which you can ask to be given as a matter of discretion on the part of the Sovereign (or his/her representative; the Lord Lyon). A petition to the court would be made in relation to arms which a person claims to have inherited by right, but this is not what the leaflet is dealing with in the passage quoted because the next sentence refers to a person 'wishing to obtain arms'.

49. In the first place, everything the Lord Lyon said about my barony in his letter of 20/3/2017 was wrong.

    a. He said that by a disposition dated 28/5/1998 my wife appeared to transfer the *dominium directum* (feudal superiority) of the lands and barony to me. This is wrong. By a disposition dated 20/12/2004 (not 28/5/1998) my wife did transfer (not appeared to transfer) her half interest (not the whole interest) in the *dominium directum* to me. So, that's three things wrong out of three.

    b. He said that according to the letters patent (that is, the grant of arms) I did not have the use of the land but only owned the superiority. This is wrong and a red herring. My wife and I jointly owned the use of the land (*dominium utile*) and I owned the superiority (*dominium directum*); that is, together we enjoyed full legal ownership of the lands and barony. The letters patent make this very clear by saying that my wife and I were 'infeft in all and whole the lands and barony of Mordington'

in 1998 and that she transferred her interest in the superiority to me in 2004. 'All and whole' means the full legal interest; it's there in black and white. His statement is a red herring because a person only needs to own the superiority to be the baron, so whether you own the use of the lands (*dominium utile*) is irrelevant. The fact that the Lord Lyon got so muddled over this issue proves what I already know; that is, that the Lord Lyon is not an expert either in feudal law or peerage law. He knows about the modern conveyancing steps required to transfer ownership of a barony, which is a very different thing. He is way out of his depth.

c. He said the evidence is unclear as to whether I still own the barony. This is wrong. There is conclusive evidence of my ownership in the grant of arms (which has been accepted by, amongst others, the Passport Office, various banks and courts of law) and my written statement in the petition to the effect that I still own it. There is no evidence at all to suggest that I no longer own the barony. The Lord Lyon's statement is rather like saying: 'Well, you have a certificate that you owned x yesterday, but how do I know that you still own x today? Prove it.' The fact is that there is no evidence of any disposal in the interim and, in my case, there is my formal written statement in the petition, which could be used as evidence in a court of law, confirming my continued ownership of the barony. When I obtained my grant of arms in 2007, the Lord Lyon (a previous Lord Lyon) accepted the evidence that we had acquired the barony nine years previously in 1998; he did not require me to prove that I still owned it right up to the date of the grant of arms. This is rather like producing a marriage certificate to prove you are married and receiving the response: 'You might have got married 20 years ago but can you prove you are still married today?' It's ridiculous because, in effect, you are being asked to prove a negative ('Prove you haven't secretly sold your barony.'). The Lord Lyon even undermines his own argument. He wrote: 'He did own the feudal barony at the time of his Grant of Arms…'. Really? And how does he know that, given that, at the time of the grant of arms in 2007, the only evidence of ownership that his office had received dated from 1998, when we acquired the barony, and 2004, when my wife transferred her interest in the feudal superiority to me? If, in 2007, the Lord Lyon was prepared to accept the continuing relevance of evidence from several years before, why is he, in effect, questioning the same 'old' evidence now?

50. In the second place, everything the Lord Lyon said in his letter of 20/3/2017 about feudal baronies generally was also wrong. And not wrong in a small way but total rubbish. The main point is that he makes a number of unsupported assertions which, as I show below, are complete nonsense. At the same time, he completely ignores all the arguments put forward in my petition, which he says he has read. <u>How can a person, when asked to comment on a petition, not respond to any of the arguments raised in it?</u> It is like a judge issuing a judgment which doesn't deal with any of the arguments raised by the parties to the case. Yes, it is that ridiculous. And yet the Crown Office and others (the Clerk of the Parliaments and Lord McFall of Alcluith included) just accepted his assertions at face value. There was no 'Hold on a minute, why don't you answer arguments x, y and z which are put forward in the petition, which not only directly contradict your unsupported assertions, but which would seem to prove quite clearly,

based on the evidence, that you are wrong.' In my view, no honest person who had read my petition and genuinely wanted to find out the truth could fail to ask such a question. But the Crown Office, the Clerk of the Parliaments, Lord McFall of Alcluith and the Lord Speaker are not honest. The Lord Lyon's letter told them what they wanted to hear, so they just accepted it.

a. The Lord Lyon wrote: *'The essential information is that such feudal baronies can be bought and sold and have never been understood to form part of the peerage in Scotland.'*

    i. In the first place, feudal barons were the original peers of Scotland, long before any personal peerages created by letters patent existed. This is an undoubted historical fact.* The first personal peerage created by letters patent was the Earldom of Douglas in 1358, so, given that there were peers before that date, who were those peers? They can only have been the feudal barons; they are the only possible candidates (earls were also feudal barons because they held their lands *'per baroniam'*). The same argument applies in England, along the lines of 'If feudal barons were not peers, who were the earls and barons, being peers, referred to in Magna Carta (clause 21 for instance), given that there were no personal peerage titles at that time?' Difficult one that.

    *James, Viscount of Stair, Scotland's greatest jurist and an institutional writer regarded as authoritative in Scottish courts of law, says, in his *'The Institutions of the Law of Scotland'* (Bell & Bradfute, Edinburgh, 1832, Vol. I, II.3.1): *'And thence also ariseth the feudal jurisdiction, whereby not only the Sovereign power, but all superiors do, by the advice and assistance of their vassals, who are called the peers of their court, order and determine all things* […].*'* In other words, the immediate vassals of any feudal superior were the peers of that superior's court (the jury, in effect), which means that feudal barons, as immediate vassals of the King, were the peers of the Kingdom (Scotland), in the same way that, say, the immediate vassals of an earl were the peers of the earldom, and the immediate vassals of a baron were the peers of the barony. Of course, the King's court evolved into Parliament over time (Parliament is still referred to as 'The High Court of Parliament'). In this way, the feudal barons were the original peers of the realm, with a right to sit and vote in Parliament as members of the nobility and thus the exact equivalent of 'modern' peers. The designation of 'peer' was later adopted (usurped) by people (peers in the modern sense) whose right to sit and vote in Parliament as nobles derived from personal titles created by letters patent (rather than by virtue of holding baronies (that is, estates of land with baronial jurisdiction) immediately of the King), and who were not peers in the proper and original sense of the word. 'Peer' derives from the Latin '*pares*', meaning 'equal', and refers to the fact that the immediate vassals of a feudal superior were equal in degree, or legal standing, in the feudal hierarchy, so the word 'peer' properly refers to a feudal

relationship between the vassals of a feudal superior, which rather begs the question of how a person with no such feudal relationship can be a 'peer'. As I have said, the word 'peer' has been usurped; it is not the feudal barons who are not the proper peers, it is modern peers who are not proper peers. This is a simple fact of history and the Lord Lyon can assert otherwise until he is blue in the face, but it won't alter the facts. So, the Lord Lyon is directly contradicted by Scotland's most authoritative institutional writer.

ii. Lord Bankton, an institutional writer regarded as authoritative in Scottish courts of law, states, in his *'An Institute of the Laws of Scotland'* (II, III, para. 83), that *'anciently all nobility, in the modern states, proceeded from such fees* [baronies and regalities]*: thus the title of Baron included that of Duke, Marquis and Earl, as well as that of Lord* [These are all feudal titles of course, being baronies]. ***All* [feudal] *barons were equally intitled, as Lords of Parliament, to sit and vote in it*** [my emphasis]*; the three estates, consisting of the clergy, barons and commissioners of shires.* This confirms that feudal barons were Lords of Parliament and so peers in the modern sense (because they were Lords of Parliament who sat by virtue of their nobility). So, the Lord Lyon is directly contradicted by another institutional writer.

iii. The return by the Lords of Session (the judges of the Court of Session, Scotland's highest civil court) to Parliament dated 12/6/1739 (Nisbet, *'System of Heraldry'*, Vol. II, Part IV, p. 181) stated (my emphasis): *'First then, they [the Lords of Session] take the liberty to remark, that they cannot discover in the records any patent [my emphasis] of honour creating a peerage, earlier than the reign of king James VI. Before that time, titles of honour and dignity were created by erecting lands into earldoms and lordships [my emphasis], and probably by some other method that cannot now, in matters so ancient, be with any certainty discovered : For a great many noble families appear, from the rolls of Parliament, to have sat and voted in Parliament as lords of Parliament, though no constitution of the peerage, or title of honour under which they sat, can be now found in the records : But as the constitution in most ancient cases does not appear, and the chiet evidence of the titles being hereditary is the successor's regularly possessing the predecessor's rank in Parliament, it is not possible, without hearing the allegations that may be made, and examining the evidence that may be brought by contending parties, to form any judgment of the limitations of such ancient peerages.'* This reference to feudal titles (and we know they are feudal by the reference to 'erecting lands into earldoms and lordships') as 'ancient peerages' makes it clear that in 1739 the Court of Session (Scotland's highest civil court) accepted that ordinary feudal baronies (and earldoms and lordships were ordinary feudal baronies in that they were held *'per baroniam'* in the same

manner as all other feudal, non-regality, baronies) were then peerages; that is, in 1739. Note that this is after the Union of 1707, so what was a peerage at that time must still be a peerage today, if it still exists. In short, feudal baronies in the form of lordships and earldoms (which were identical in all respects to 'ordinary feudal baronies', apart from their classification as lordships and earldoms and the method of being summoned to Parliament; that is, by individual writ) were peerages in 1739 and so must continue to be peerages today. So, the Lord Lyon is directly contradicted by Scotland's highest court of law.

iv. In the Berkeley Peerage Case of 1858-1861, the House of Lords itself confirmed that English feudal baronies were originally peerages and continued to be so until tenure by barony was abolished by the Tenures Abolition Act 1660, when they became personal peerages in the same way as 'modern peerages'. As I explain below (para. 64 *et seq.*), if English feudal baronies were peerages (the holders were peers of England) it necessarily follows that Scottish feudal baronies must also have been peerages (the holders were peers of Scotland), since they were, in all essentials, identical, the latter being modelled on (a conscious copy of) the former. So, the Lord Lyon is contradicted by the House of Lords itself.

v. Given that the feudal barons were the original peers of the realm, the question then becomes 'Given that feudal barons were peers, when and how did they cease to be such?' This is not a question that people like the Lord Lyon like to answer, and when you read my petition you will see why, including statements by institutional writers (who are considered to be authoritative in Scottish courts of law) confirming that the feudal barons never did cease to be peers - and this is why I am a peer right now.

vi. If you limit the definition of a peerage to personal titles created by letters patent, what are called 'modern peerages' or 'peerages in the modern sense', then no feudal barony will qualify as a peerage because feudal baronies were territorial titles attached to land, not personal titles. Of course, people who say things like 'a feudal barony is not a peerage' overlook or conceal the fact that they are talking about modern peerages. This is circular reasoning along the lines of 'I define 'peer' as a personal title created by letters patent, so it follows that feudal barons are not peers.' It is circular because your starting assumption determines your conclusion; it is your conclusion, just expressed the other way around. That the Lord Lyon was doing precisely this is proved by his statement: *'In peerage law there is a grant to a specific person with a destination of the peerage.'* Of course, this is also true of feudal baronies (the land is erected into a barony and then the lands and barony are granted to the grantee and a series of heirs); it is just that the destination clause includes assignees, and this

allows the barony to be bought and sold. But, as I show below, all Scottish peerages, however created, can be bought and sold.

vii. A peerage is defined as <u>that dignity of nobility which carries with it the right to sit and vote in the House of Lords</u>* (or rather, as a noble, which, in England, means in the House of Lords), or would have done so before the passing of the House of Lords Act 1999 (which, with certain exemptions, removed the right of hereditary peers to sit and vote in the House of Lords). Note that this definition makes no mention of the method by which the peerage was created (tenure of land, writ of summons or letters patent), what matters is the right to sit and vote, nothing else, so the right can be attached to land and exercised by the owner of that land. Now, feudal barons had this right, so they were certainly peers in accordance with the proper meaning of that word. The only difference between feudal barons and modern peers (the holders of personal peerages created by letters patent) is that, in the case of feudal barons, the title was attached to land (and so the person held the title by virtue of possessing the land) and they were created by crown charter rather than by letters patent. But the essence of the thing, the right to sit and vote in Parliament as a noble, is common to both. This means that the Lord Lyon's assertion that feudal barons '*have never been understood to form part of the peerage in Scotland*' is utter nonsense.

*R.P. Gadd, *'Peerage Law'*, ISCA Publishing, 1985, p. 2),

viii. Further, and another point I raise in my petition, if Scottish feudal baronies are not peerages, why are there currently four Scottish feudal baronies on the Roll of the Peerage? This is another inconvenient fact which the Lord Lyon chose to overlook (even though I pointed this out in my petition). *'Complete Peerage'* (2nd ed., Vol. XIIA, p. 779, n. d) quotes Riddell, in his *'Remarks upon Scottish Peerage Law'* (p. 63), as saying with respect to the Barony of Torphichen (one of the four on the current Roll of the Peerage): *'Is not this a territorial Peerage, and bearing a striking resemblance to the Earldom of Arundel, as represented for some centuries backwards, by English authorities?*'

ix. Further, under Scottish peerage law a peer can resign his peerage into the hands of the King for regrant to a new series of heirs (the descent of the peerage is altered, and this could include to someone unrelated by blood; a complete stranger). There is nothing to stop a peer from doing this for money, which means that he would, to all intents and purposes, be selling his peerage. Halsbury, *'The Laws of England', Butterworth & Co., London, 1909, Vol. 22, p. 275* states: *'A Scottish peer could resign his dignity into the hands of the King, in order to extinguish it, or, which was usual, resign for a novodamus altering the course of descent.'* In note b. he states: *'The power seems to have been abolished by the Union with*

Scotland Act 1706 (6 Anne c. 11).' This cannot be correct (no-one is infallible, not even Halsbury) as it would be contrary to the fundamental presumption against taking away rights (that is, the abolition is not expressly stated or necessarily implied). Further, in a memorandum by the then Lord Advocate, the senior law officer of the Crown in Scotland, which appeared at Appendix 12 of a Report of a Joint Committee on House of Lords Reform in 1962, he observed (and in relation to the right of Scottish peers to resign their honours to the King for re-grant to a new series of heirs): *'On the whole I am of the opinion that the pre-Union procedure* [i.e. law] *has never been abrogated and is still legally competent'* (Sir Malcolm Innes of Edingight, Lord Lyon 1981-2001, *'Peers and Heirs'*, Scottish Genealogist, Sept. 1995, p. 99). This means that in 1995 a former Lord Lyon expressed the view that a Scottish peer can still resign his peerage into the hands of the King for re-grant to a new series of heirs. So, the Lord Lyon is directly contradicted by a former Lord Lyon; one rather more knowledgeable than he is.

x. Further, multiple Scottish 'modern' peerages include assignees in the destination clause. This allows the peer to sell his peerage without consent from the Crown (since consent has already been given in the destination clause). Examples of this are Torphichen (*'Complete Peerage'*, 2nd ed., Vol. XIIA, p. 776) and Cardross (*'Complete Peerage'*, 2nd ed., Vol. III, p. 18). According to J. F. Riddell, in his *'Inquiry into the Law and Practice in Scottish Peerages'* (Edinburgh, 1862, Vol. I, p. 208-211), a power of assignation was enough to allow the simple conveyance of a personal peerage title to an assignee. So, the Lord Lyon is directly contradicted by the most authoritative work on the British peerage and by a reputable authority on Scottish peerage law.

xi. In short, the Lord Lyon's assertion that a title cannot be a peerage because it can be bought and sold is provable nonsense. All Scottish peerages, including every single one on the Roll of the Peerage, can be bought and sold. This just proves the Lord Lyon's ignorance of Scottish peerage law - or his dishonesty. Which do you think it is?

51. I could go on, but I would be in danger of just regurgitating my petition. The point is that the arguments in my petition have simply been ignored, and deliberately so. I could repeat them a million times but all I will get back is a repetition of the Lord Lyon's nonsensical and unsupported assertions. I know this because the Crown Office, the Lord Chancellor (apparently), the Clerk of the Parliaments, the Chairman of the Committee for Privileges and Conduct (Lord McFall of Alcluith) and the Lord Speaker have all done this. They simply refuse to consider my arguments or my evidence. They've got the answer they want and are going to stick to it. They believe that they are above the law.

Reliance on the Lord Lyon's opinion

52. So, not only is an opinion from the Lord Lyon not a formal opinion, because he has no formal role in determining peerage claims (he cannot be acting in either

a judicial capacity, by issuing a judgment of the Lyon Court, or a ministerial capacity, by exercising his discretion to grant arms to virtuous and deserving people - the only two capacities he can act in), but, in my case, it was not even an expert opinion, because the current Lord Lyon is not an expert in peerage law, as I have shown. This means that an opinion from the current Lord Lyon is an unofficial and informal opinion from someone who doesn't know what he is talking about. It is, in my view, a serious and intentional dereliction of duty (amounting to misconduct in public office) for the Lord Lyon to give, and for any official to rely on, such an 'opinion', given that it is so obviously devoid of reasoning and does not address any of the arguments advanced in my petition; not one. Anyone who does try to rely on such an opinion clearly has an agenda and is not remotely interested in seeking the truth. No reasonable person would do such a thing. Note also that for a person (the Lord Chancellor for instance) to rely solely on the Lord Lyon's opinion in determining a peerage claim is to, in effect, delegate the determination of that peerage claim to the Lord Lyon, which is unlawful. This would particularly be the case where the Lord Chancellor either did not read the petition on which the Lord Lyon was commenting or did read it but had insufficient knowledge of the relevant law to weigh the Lord Lyon's legal arguments, if any, against those of the petitioner. This seems to have been exactly what happened in my case, since there is no indication that the Lord Chancellor was aware of the fact that the Lord Lyon failed to address any of the legal arguments in my petition. If the Lord Chancellor did read my petition, then he would be aware that the Lord Lyon did not respond to my legal arguments; in which case he was duty bound to ask the Lord Lyon to do so (He was, after all, asked to comment on my petition). As I have said, no reasonable person would accept unsupported assertions in the face of cogent and well-sourced arguments on the other side, which is what I provided.

53. It is also, of course, a serious breach of the relevant rules of professional conduct for an advocate/barrister (and the Lord Lyon is a QC) to give an opinion on a matter when he knows he does not have sufficient knowledge of the relevant law to do so. This is comparable to (but less dramatic in effect than) an unqualified person pretending that he knows how to fly a plane full of passengers or how to carry out complex surgery on a gravely ill patient. For instance, how can an advocate *'inform the Court of authorities relevant to the material issues in the case, even where such authority may be against his interest'* ('*Guide to the professional conduct of advocates'*, 6th ed., para. 6.1.2) when he knows that he doesn't know what 'the authorities relevant to the material issues of the case' are? Note that the heading for section 6 is 'Duty to the Court and duties connected with court and similar proceedings.' My petition comes under the head of 'similar proceedings' at the very least. In addition, para. 6.8 says: *'Where an Advocate appears against a party litigant, he should as far as consistent with his duty to his client, co-operate with the Court in enabling the party litigant's case to be fairly stated and justice to be done.'* I am a party litigant (acting on my own) and the Lord Lyon is acting for the 'other side' (he is 'appearing' in the sense of 'taking part in the proceedings', it is just that he is putting an argument in writing rather than putting an argument in court) and he therefore had a duty to assist in ensuring that my case is fairly stated and that justice is done. This must involve acknowledging the merits of my arguments, where they have merit; not just ignoring them altogether. If a person has a good argument, how does it ensure that justice is done to ignore it? If a person has a bad argument, how does it ensure that justice is done to not explain why it is

bad? Para. 17.3 states: *'Where an Advocate is the holder of a public office, for appointment to which he is qualified by reason of his status as Advocate, he is bound by all the professional obligations of a practising Advocate insofar as they are relevant to the performance of his duties.'*, so the Lord Lyon is bound by these rules when acting as Lord Lyon - and if he was not acting as Lord Lyon, he was still bound by the rules of professional conduct because he was giving legal advice.

54. The Lord Lyon did have an advisory role in setting up the Roll of the Peerage, but he has no role in maintaining it. The Royal Warrant establishing the Roll of the Peerage does not give the Lord Lyon any role in determining peerage claims, as was deceptively asserted by the Crown Office in my case.

55. Note that it was the Court of Session, not the Lord Lyon, which submitted the original Union Roll in 1707, which confirmed the peers of Scotland at the time of the Union. In other words, when the government wanted confirmation of the members of the peerage of Scotland, it went to the Court of Session, not to the Lord Lyon. Before the Union disputes over or claims to peerages were decided by the Court of Session; now the House of Lords has exclusive jurisdiction in such matters.

<u>Scottish feudal baronies currently on the Roll of the Peerage</u>

56. As I explain in the attached petition, there are currently four Scottish feudal baronies recorded on the Roll of the Peerage as hereditary peerages. These are the Dukedom (Duchy) of Rothesay, which is held by the Prince of Wales, the Earldom of Mar, the Earldom of Sutherland and the Barony of Torphichen.

57. You will appreciate that if feudal baronies are not peerages, Lord McFall of Alcluith is saying that the Dukedom (Duchy) of Rothesay is not a peerage. Has he told the Prince of Wales, and, if not, why not?

<u>Duchies of Cornwall and Lancaster</u>

58. Further, both the Duchy of Cornwall and the Duchy of Lancaster are undeniably territorial, and thus feudal, in that their rights are attached to and extend over a geographical area in each case; the County Palatine (properly 'Duchy Palatine' I think) of Cornwall and the County Palatine (properly 'Duchy Palatine' I think) of Lancaster. They are 'duchies' (territorial titles) and are referred to as such; they are not 'dukedoms' (personal titles not attached to land). If there is a 'Duchy of Cornwall', as there is, that Duchy cannot also be a 'Dukedom of Cornwall'. I have never heard any assertion to the effect that there are two titles; one a duchy and one a dukedom. Because these titles are attached to land, they are territorial, and so cannot be personal titles, even if initially created as personal titles. Once a title has land annexed to it, it becomes a territorial title (a title attached to land) and thus feudal; feudal because it relates to land received by a grant from the Crown and it is held of the Crown with rights and obligations on both sides (a feudal contract). It doesn't matter whether the title is attached to the land or the land is attached to the title, they are 'parcel' the one with the other, which means joined together in an indivisible whole. And where a title and land are indivisibly united, we have a territorial or feudal title. The duchy charters confirm that the lands were annexed to the titles, and if they became feudal/territorial, how and when did they cease to be so? The *'Complete Peerage'* (2nd ed., vol. III, p. 444, n. c) says: *'Accordingly, since the accession of the Kings of Scotland to the throne of England (1603) the Dukedom of Rothesay,*

&c. [S] has been held by the same person and on the same tenure as the Dukedom of Cornwall.' Now, since the Dukedom (Duchy) of Rothesay is a feudal title (as stated in *'Complete Peerage'*, 2nd Ed., Vol. XI, p. 208, n. b), the Duchy of Cornwall must be one as well. And if the Duchy of Cornwall is feudal, then so is the Duchy of Lancaster.

59. The Duchy of Cornwall is recorded on the Roll of the Peerage, so will Lord McFall of Alcluith now demand its removal on the basis that feudal baronies are not peerages (all feudal titles, from baron to duke, are held 'by barony' and are thus baronies, whatever their rank)? The Duchy of Lancaster is not recorded as a peerage because it is held by the monarch and, the theory goes, the monarch cannot hold a peerage of himself/herself, since the monarch is not a 'peer' (equal) of anyone. The Duchy of Lancaster is thus merged with the Crown, though administered as a separate legal entity. I think this is a legal nonsense; if the Duchy is a separate legal entity, it cannot be merged with the Crown because something that merges with the Crown disappears in a legal sense; it is legally destroyed. But feudal titles do not merge with the Crown; they remain distinct and unmerged, so the fact that the Duchy of Lancaster is unmerged tends to prove that it is feudal in nature; a title over land that is neither personal nor a peerage (in the modern sense).

Scottish feudal baronies are peerages by statute (Earldom of Mar Peerage Claim)

60. Further, the fact that a Scottish feudal barony is a peerage has already been confirmed by the House of Lords itself and by statute (Earldom of Mar Restitution Act 1885), as described in para. 3 of my petition, where I say:

    'Thus, the present Countess of Mar of the 1404 'creation' is, in fact, a feudal countess, given that the Earldom of Mar Restitution Act 1885 restored 'the honours, dignities, and titles of peerage anciently belonging to or enjoyed and held with the territorial earldom of Mar…'. This is, in effect, a recognition of a feudal/territorial earldom, given that it recognizes that the peerage 'belongs to' (is parcel with) the feudal/territorial earldom (they were and are, in fact, one and the same thing). Bear in mind that the ancient peerage can only have been of the feudal/territorial kind. Note the statutory recognition of a territorial earldom and of the peerage belonging to (actually the same as) that earldom.'

Act of the Scottish Parliament of 1503 (c. 78) - Peers by statute

61. Further, one of the arguments advanced in my petition (para. 25), which is conclusive of my petition if correct, is that feudal baronies greater in extent than 100 merks, which included the Barony of Mordington, were accounted 'greater baronies' (that is, peerages in the modern sense) by an Act of the Scottish Parliament of 1503 (Parl. 1503, c. 78), as confirmed by one of the greatest institutional writers, Lord Stair, in his *'The Institutions of the Law of Scotland'* (Vol. I, II.3.2), deemed authoritative in Scottish courts of law. Thus, Stair directly contradicts the assertion that my feudal barony is not a peerage; it was made a peerage (in the modern sense) by an Act of Parliament of 1503 (even if not already a peerage for other reasons, as I maintain it was) and so has been a peerage in the modern sense for over 500 years.

The Berkeley Peerage Claim

62. Further, when, in 1858, Vice-Admiral the Right Hon. Sir Frederick Maurice Fitzhardinge Berkeley K.C.B. (1788-1867) claimed the right to a seat in the House of Lords on the basis of possession of the English feudal barony of

Berkeley, he was not sent away with a flea in his ear despite the fact that previous claims of this type had been rejected (Abergavenny (1604), Fitzwalter (1670)). No, his case was argued before the Committee, with the Attorney-General representing the government, and it went on for several years (The Berkeley Peerage (1858-1861), VIII, HLC, 21-159). Further, the Committee ruled that there was, in fact, a Barony of Berkeley, derived from the feudal barony, but not itself a barony by tenure, still existing (the barony by tenure became a barony by writ by operation of the Tenures Abolition Act 1660), although the claimant had not claimed a barony by writ and could not succeed to it in any event, being illegitimate.

63. You will note that, in the Berkeley Peerage Case of 1858-1861, none of the peers hearing the case* argued that the case should not be heard at all because a *'feudal barony is not an hereditary peerage'* and so '*neither the jurisdiction nor the standing orders of the House of Lords are engaged'*, as Lord McFall of Alcluith has claimed. No, they acknowledged, by hearing the claim, that the question of whether an English feudal barony is a peerage fell within the jurisdiction of the House of Lords, and they heard the arguments and delivered their judgments accordingly. So, who is right? The Lord Chancellor, three former Lords Chancellor, a member of the Appellate Committee of the House of Lords (the highest court in the land at that time) and a former member of the Judicial Committee of the Privy Council - or Lord McFall of Alcluith, who has no legal knowledge at all? Hmmm, difficult one that. Reflect on the fact that it did not occur for one second to these so-called privileged stick-in-the-mud anti-democratic hereditary peers, as they are popularly viewed, to usurp the rule of law, whereas it did not occur for one second to modern, virtuous and democratic Lord McFall of Alcluith, as I am sure he sees himself, not to usurp the rule of law. For Lord McFall of Alcluith, it was second nature.

    *Lord Campbell (The Lord Chancellor - then head of the judiciary in England and Wales and the presiding judge of the Chancery Division of the High Court of Justice), Lord Kingsdown (former member of the Judicial Committee of the Privy Council), who did not deliver a judgement, Lord Cranworth (former Lord Chancellor), Lord St. Leonards (former Lord Chancellor), Lord Chelmsford (former Lord Chancellor), Lord Wensleydale (Appellate Committee of the House of Lords), who did not deliver a judgement, and Lord Redesdale (Chairman of Committees - a position currently held by Lord McFall of Alcluith).

64. Further, in the Berkeley Peerage Case of 1858-1861, Lord St. Leonards said (The Berkeley Peerage (1858-1861), VIII, HLC, 118-119): *'The right to sit* [in the House of Lords] *is saved* [by s.10 Tenures Abolition Act 1660]*, but it no longer depends upon the tenure which is extinguished. The title of Honor was left as a substantive personal right. The tenure was not saved in the particular instance in order to save the title of Honor, but the title of Honor was itself saved although the tenure was destroyed.* [...] *There is, indeed, a Barony of Berkeley, not depending on tenure still existing.'** What Lord St. Leonards is saying here is that there is a Barony of Berkeley still in existence and that barony carries with it the right to sit and vote in the House of Lords (If there was no right to sit, how can that right have been saved?), but that barony is no longer a feudal barony because tenure by barony was abolished by the Tenures Abolition Act 1660, and, not being a barony by tenure or by letters patent, it can only be, in effect, a barony by writ. Of course, it was not created by writ in the normal sense of a writ of summons being sent to a person who had no existing right to sit and

vote in the House of Lords (logically, when the original feudal barons of Berkeley sat in Parliament, and we know that they did, they must have been summoned by a writ of summons, but because they were already barons, such writs did not create a barony by writ), it was created, or rather converted, by the operation of the Act of 1660, so a more correct term might be 'a barony created by statute or by operation of law'.

*Note that he did not say 'if there is a right to sit, it is saved', he said 'the right to sit is saved', clearly meaning that there was a right to sit and it is saved.

65. On this basis the Tenures Abolition Act 1660 did to English feudal baronies exactly what the Abolition of Feudal Tenure etc. (Scotland) Act 2000 did to Scottish feudal baronies; that is, it destroyed the feudal tenure, made the title a personal right, but expressly stated that it had no effect on any other aspects of (rights parcel with) the title, necessarily including any right to sit and vote in the House of Lords. s.63 Abolition of Feudal Tenure etc. (Scotland) Act 2000 says *'nothing in this Act affects the dignity of baron'* and this equates to s.10 Tenures Abolition Act 1660, which says that the Act *'shall not infringe or hurt any title of honour, feudal or other, by which any person hath or might have right to sit in the Lords House of Parliament, as to his or their title of honour, or sitting in Parliament, and the privilege belonging to them as Peers*'. What this means is, in effect, that I cannot be claiming in respect of a feudal barony because there are no longer any Scottish feudal baronies (feudal tenure having been abolished); I must, according to the Berkeley Peerage Case of 1858-1861 (that is, on the authority of the House of Lords itself), be claiming in respect of a personal barony by writ (or possibly a barony created by statute or by operation of law). And if I am not claiming by virtue of holding a Scottish feudal barony, because no such thing exists, Lord McFall of Alcluith's statement that I cannot claim in respect of a feudal barony because a feudal barony is not a hereditary peerage falls by the wayside.

66. The parallels between the two claims (the Berkeley Peerage Case and my peerage claim) are striking, both being in respect of ancient feudal baronies, or what were feudal baronies which were converted into personal titles by operation of an Act of Parliament which abolished the underlying feudal tenure. The difference between the two claims is that the Berkeley claim was heard by the Committee for Privileges in spite of a previous ruling by the House of Lords in the Fitzwalter peerage claim of 1670 that English feudal baronies no longer existed, whereas my claim did not even make it to the Committee, being dismissed in a couple of lines by Lord McFall of Alcluith, a man who has no authority to make such a decision and who knows nothing of the relevant law even if he did have such authority; a man who, if he based what he said on the Lord Lyon's 'opinion', based his opinion on that of a person who had no right to make a determination of any sort and, even if he did, knew next to nothing of the relevant law. In other words, we have a meaningless and unauthorised opinion based on a meaningless and unauthorised opinion - a house of cards.

67. The question remains of how English feudal baronies can have been peerages and continued as such until 1660, when they became personal peerage titles, as confirmed by the House of Lords itself in the Berkeley Peerage Case of 1858-1861, while Scottish feudal baronies were, according to the Lord Lyon (parroted, it seems, by Lord McFall of Alcluith), never peerages, even though they were, in all the essentials, identical (the latter being modelled on the

former; that is, Scottish feudalism was essentially introduced as an imitation or copy of English feudalism), when the Scottish feudal barons continued to sit in Parliament as nobles long after English feudal barons had ceased to do so, and when the underlying feudal tenure was also abolished by an Act of Parliament which protected all other (non-feudal) aspects of baronies. In short, if English feudal baronies ended up as personal peerage titles, how can Scottish feudal baronies not have done the same, when they were originally the same and their underlying feudal nature was abolished in an identical manner (preserving all non-feudal aspects, including any right to sit and vote in the House of Lords)? It is rather like taking two sets of identical cake-making ingredients, putting those ingredients through identical cake-making processes, but ending up with two completely different cakes. How can this be possible? In law it can't; If you apply the same processes (rules/law) to the same inputs (facts), you must get the same output (legal conclusion).

68. Further, Lord McFall of Alcluith's E-Mail to me dated 10/1/2018 seems to imply that a peerage claim can only be made in relation to a title which is already acknowledged to be a peerage, so that the question can never be whether the title is a peerage but merely whether the petitioner is entitled to a peerage the existence of which has already been established, such as where a son succeeds his father in a peerage. The Berkeley Case proves that this is untrue; that is, that a peerage claim can claim not only (1) that the claimant is the holder of the title but also (2) that the title is a peerage. In fact, there is no point in considering (1) without having considered, and settled, (2). In other words, the Berkeley Case proves that it is within the jurisdiction of the House of Lords to decide whether a title is or is not a peerage. If this was not true, there would be no court which could settle such an issue (whether a title is or is not a peerage). Lord Halsbury (*'The Laws of England'*, Butterworth & Co., London, 1909, Vol. 9, p. 21) says that *'In peerage cases there are two questions, one of law, that of the nature and existence of the dignity; the other of fact, that of descent to the claimant.'* This confirms what I have said; namely, that a peerage claim involves considering (1) the nature and existence of the dignity (that is, whether it exists and whether it is a peerage) and (2), given (1), does that peerage belong to the claimant? Of course, the fact that Halsbury confirms that because a peerage claim includes considering whether the title is a peerage, that question falls within the jurisdiction of the Committee for Privileges and Conduct (House of Lords) and most certainly not within the 'jurisdiction' of Lord McFall to determine on his own authority, regardless of any 'advice' he has seen. He simply has no power to do such a thing and that is that.

<u>Lords Temporal</u>

69. Further, one of the 'prayers' in my petition is to be recognised as a Lord Temporal (see the 'prayer' at para. 186). A person can be a Lord Temporal without being a peer. In para. 46 of my petition I say (my emphasis): *'That Lord Halsbury ('The Laws of England', Butterworth & Co., London, 1909, Vol. 22, p. 277) says that 'the body of Lords Spiritual and Temporal is an entity distinct from any House of Parliament' and in a note on that page he says: '<u>There are persons in possession of dignities, both ecclesiastical and lay, who are not peers of Parliament, but are, it is apprehended, lords of the realm. Bishops and prelates, barons by tenure [my emphasis], if any, are examples; for the occupants of ancient episcopal sees are to some extent disqualified, and a baron by tenure [in England] could claim no writ of summons to the House of Lords.</u> They may*

nevertheless be lords spiritual or temporal.' and that, accordingly, the petitioner is a Lord Temporal regardless of whether he is a Peer of the Realm.'

70. On this basis, a claim to be a Lord Temporal cannot be dismissed on the basis that a feudal barony is not a peerage, because a person can be a Lord Temporal without being a peer. Thus, Lord McFall of Alcluith could not dismiss this part of my petition on the basis that a feudal barony is not a peerage. Even if he read my petition, which is debateable, did he understand this point? This shows the folly of pontificating on a subject you know nothing about.

71. With regard to the question of whether the Committee has jurisdiction over a claim to be a Lord Temporal, it is to be noted that Halsbury's *'The Laws of England'* (Butterworth & Co., London, 1909, Vol. 9, p. 21), which deals with the jurisdiction of the High Court of Parliament, includes the heading *'Claims to peerages and offices of honour'*. Although the text underneath this heading deals only with peerages (presumably what is said also applies to offices of honour by virtue of the heading), this implies that the House of Lords has jurisdiction over questions relating to offices of honour, and Lord Halsbury refers (see above quote) to temporal lordships as 'dignities', which necessarily means (or, at least, strongly implies) that they are 'offices of honour'. Holding an office of honour presumably involves holding an office, as opposed to a mere rank such as 'knight' or 'baronet'. Anything that involves exercising a power must be an office, and being a feudal baron or lord of regality involved exercising a power (a slice of the royal jurisdiction). Merriam-Webster defines office as 'a position of authority to exercise a public function' (https://www.merriam-webster.com/dictionary/office, accessed 2/11/2018) and clearly includes barons and lords of regality.

72. An example of an office of honour might be an office held by Grand Sergeantry, other than those relating to the performance of some service at a coronation or coronation banquet, which are determined by the Court/Committee of Claims. If a claim to such an office of honour was to be made to the monarch, it would presumably, like a peerage claim, be referred to the House of Lords, which would refer it to the Committee for Privileges. *'Reports of the Lords Committees touching the Dignity of a Peer of the Realm'*, ordered to be printed 18/5/1829, Vol. 2, p. 31 refers to the House of Lords hearing the Case of the Office of Great Chamberlain. This proves that the jurisdiction of the House of Lords extends beyond peerage matters and includes jurisdiction in relation to offices of honour.

<u>The Clerk of the Parliaments</u>

73. Further, and in relation to Lord McFall of Alcluith's statement concerning the Clerk of the Parliaments, I never submitted my petition to the Clerk of the Parliaments, who has no role to play in petitions, such as mine, which do not seek entry on the register of hereditary peers who are eligible to be elected to the House of Lords (*'The Clerk of the Parliaments ceased work on the Roll with the passing of the House of Lords Act 1999.' - 'Guidance notes on succession to a peerage where no right to stand for election in Lords' by-elections is sought'*, Crown Office, Revision 5/07).

74. Further, the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2017) states, at para. 1.06:

'The Clerk of the Parliaments maintains a register of hereditary peers who wish to stand in any by-election under SO 10. Any hereditary peer other than a peer of Ireland is entitled to be included in the register. Under SO 11, any hereditary peer not previously in receipt of a writ of summons who wishes to be included in the register petitions the House and any such petition is referred to the Lord Chancellor to consider and report upon whether such peer has established the right to be included in the register.'

75. Note that, under the Standing Orders, a petition to be included on the register of hereditary peers who are eligible to be elected to the House of Lords is submitted to the House and referred to the Lord Chancellor. This is a mandatory procedure; there is nothing to say that a petition 'may' be submitted to the House and 'may' be referred to the Lord Chancellor; the procedure is that a petition must (can only) be submitted to the House and it will then be submitted to the Lord Chancellor. This means that if I had submitted my petition to the Clerk of the Parliaments, it would, under the Standing Orders, had to have been referred to the Lord Chancellor.

76. I properly submitted my petition to the Crown Office, but it seems that the Crown Office illegitimately got the Clerk of the Parliaments (Mr. Ed Ollard) to write to me (letter dated 12/10/2017) purporting to reject my petition when he had no legitimate reason or legal authority to do so. I think this was an attempt to 'scare me off' with the 'voice of authority'. So, because my petition did not seek entry on the roll of hereditary peers who are eligible to be elected to the House of Lords, the Clerk of the Parliaments could not 'act properly in refusing to accept my petition', as Lord McFall of Alcluith asserted. How can a person legitimately reject a petition which has not and could not legitimately be submitted to him? In complaining to Lord McFall of Alcluith as Chairman of the Committee for Privileges and Conduct about the Clerk of the Parliaments, I also submitted my petition to him. These were two separate things and the latter did not depend on the former except to the extent that the former was evidence of the Crown Office's refusal to deal with my petition properly. Of course, Mr. Ollard's conduct was clearly criminal, being an attempt to pervert the course of justice and misconduct in public office, if not also fraud (a false representation giving rise to a risk of loss), and Lord McFall of Alcluith became party to that criminal conduct.

The Lord Speaker

77. I referred the matter to the Lord Speaker but in an E-Mail to me dated 15/1/2018 he replied:

    'As the Senior Deputy Speaker said to you in his email of 10 January, as far as the House of Lords is concerned, the matter is now closed. By "the matter", he meant your complaint against the Clerk of the Parliaments but also all aspects of your attempts to refer your claim to a feudal barony to this House.'

Did Lord McFall of Alcluith have any authority to act as he did?

78. You will appreciate that, in making the statement that a feudal barony is not a hereditary peerage, Lord McFall of Alcluith asserted, in effect, that he has the authority to rule upon (that is, determine in a legal sense) a peerage claim (I have claimed that I am a peer and he has ruled that I am not). In response to my claim to be a peer, he is using the circular argument; 'You cannot claim to be a peer because you are not a peer.' To which the response is: 'You have no

authority to rule on the question of whether or not I am a peer, so you cannot rule that I cannot claim to be a peer because I am not a peer.' This is Alice in Wonderland stuff.

79. I have come across this tactic before. Indeed, it is quite common and is often used in relation to complaints to official, regulatory or professional bodies. The problem is that once a complaint has been accepted into the complaints process, it becomes subject to the whole raft of rules and procedures which comprise that process; not the least of which is usually some form of appeal or external review (potentially very dangerous where there is serious wrong-doing). For Heaven's sake, the complaint might actually be upheld! The simple way of avoiding all this is to rule that the complaint is not a complaint, because if it is not a complaint it can't go through the complaints process. Voila! Problem solved!

80. If a complaint is defined as *'any facts or matters which indicate that a member, a firm or provisional member may have become liable to disciplinary action'* (this is the ICAEW definition of 'complaint'), a complaint can be dismissed on the basis that it is not a complaint simply by asserting that, in the opinion of the writer, there is no indication that the person may have become liable to disciplinary action. Because this is an opinion, it can be persisted in despite the evidence provided by the complainant; for example, 'The fact that the bank went bankrupt one month after a clean audit report was issued does not, in my view, indicate in any way that the auditors did not do their job properly.' This is based on a real example. In addition, of course, complainants very rarely have the authority or means to obtain the key internal evidence which will prove their case - but the regulatory body being complained to will have such authority and means. It is to obtain such evidence that the complaint is made in the first place, so it is nonsensical to refuse to investigate a complaint on the basis that it has not provided the evidence which would or could be obtained if the complaint were to be investigated. A complainant cannot reasonably be expected to provide more than basic facts (which may only be publicly known facts) which point towards a possibility of misconduct, such as: Fact 1 - the auditors issued a clean audit report; Fact 2 - the bank went bankrupt one month later.

81. The police regularly use a similar gambit along the lines of 'We won't investigate your crime report because of lack of evidence', which rather ignores the fact that it is the investigation which provides the evidence. In other words, they say 'We won't investigate it until we have the evidence and we won't have the evidence until we investigate it.' They do this all the time.

82. A similar tactic was used by Ms. Lucy Scott-Moncrieff, the House of Lords Commissioner for Standards in her letter to me dated 20/2/2018 in response to my complaint to her about Lord McFall of Alcluith dated 11/1/2018 (see appendix). While she did not adopt the ruse of claiming that my complaint was not a complaint, she used the next best ruse (also a common tactic amongst officials), which was to assert that my complaint was outside her jurisdiction since it concerned a matter of policy and judgment as per para. 116 of the *Guide to the Code of Conduct** (there's always some way of claiming that a complaint is outside the jurisdiction). Of course, this is a lie; my assertion was that Lord McFall of Alcluith had no authority to make a decision in the first place, so it did not matter what his judgment was, he had no authority to make

a judgment at all. And, of course, policy does not come into it. I am not saying that a certain policy (an objective and means of achieving that objective) is wrong, I am saying that there is no policy; that is, nothing that authorises Lord McFall of Alcluith to do what he did. It is a simple matter of whether Lord McFall had any authority (whether via a policy, rule or anything else) to do what he did. If a right (my constitutional right to petition Parliament in this case) is subject to someone else's discretion, then it is not a right, it is a favour, and the petitioner is not a petitioner, he's a supplicant. Given that a right is, by definition, something that cannot be denied to a person, if the thing can be denied to a person then it is not a right. All this is so obvious, given that it is crystal clear that the Committee for Privileges (House of Lords - the Committee is a committee of the whole House) has exclusive jurisdiction in peerage claims, and that I have a constitutional right to petition Parliament, that there can be no possibility of a mistake on Ms. Scott-Moncrieff's part; her conduct was calculated and deliberate - and thus criminal as well, being an attempt to pervert the course of justice and misconduct in public office, as explained below.

*Para. 116 states:

'Matters not within the Commissioner's remit include:

- *policy matters or a member's views or opinions;*
- *the funding of political parties;*
- *alleged breaches of the separate code governing the conduct of Government ministers as ministers; and*
- *members' non-parliamentary activities.'*

83. We need to elaborate on what is meant by 'policy' and 'judgment' (the Code of Conduct refers to *'policy matters or a member's views or opinions'*). The reason for this is that it is very easy for the House of Lords Commissioner for Standards to dismiss a complaint by saying: 'That is a matter of judgment.' It takes a lot longer to explain why it isn't a matter of judgment. She can (and did) just make a lazy assertion without explanation, whereas I have to produce a reasoned argument. 'Policy' implies both an objective and a means of achieving that objective. So, before the First World War it was Great Britain's policy to have a navy which was larger than the next two largest navies combined. This policy was a way of achieving an objective. The objective was to rule the waves; the means of achieving that objective was to have an invincible navy. The way of ensuring the invincibility of our navy was to make sure that it could beat an alliance of the next two largest navies. This might not have been sufficient if the entire world had ganged up on Great Britain, but there are limits to what can reasonably be done. The risk was not eliminated but was reduced to an acceptable level. Similarly, 'honesty is the best policy' is a rule of conduct or way of doing something, a means of achieving something (an objective). The objective might be the avoidance of future problems, damage to a person's reputation, losing one's self-respect, becoming liable to sanction or punishment and so on. So, the policy combines an objective and the means adopted to achieve that objective. The means necessarily implies an objective and an objective necessarily implies a means of achieving that objective. Why have an objective otherwise? Deciding upon a policy (the objective and means of achieving that objective) is a matter of judgment, that is, of weighing up the relevant factors. So, the word 'policy', it seems to me, brings us back to the

word ‘judgment’ because ‘judgment’ means making a decision about something by weighing up (assessing) the relevant factors. But to make a judgment, you have to have the authority to make a decision in the first place. If you have no authority to make a decision, it doesn’t matter what your decision is, you have no authority to make any decision. So, Lord McFall might make a decision to punch a fellow peer on the nose as opposed to poking him in the eye with a stick. That is a judgment in the sense that Lord McFall had to weigh up the relevant factors and make a decision. But would the House of Lords Commissioner for Standards say to the victim that she has no power to investigate the matter because it is a matter of judgment? Clearly not. Why? Because Lord McFall has no authority to decide to attack his victim in the first place, let alone decide on (make a judgement about) the best way to attack his victim.

84. When you lay it out, this is all very simple and logical stuff. There is simply no way that the House of Lords Commissioner for Standards can truly believe that she can dismiss a complaint by saying that something is a matter of judgement when it is quite clear that the person had no authority to make a judgment (discretion to dismiss a petition) in the first place.

85. Lord McFall of Alcluith has no authority to determine a peerage claim because the Committee for Privileges (House of Lords) has exclusive jurisdiction in peerage claims, as stated in Mereworth v. Ministry of Justice [2011] EWHC 1589 (Ch) (http://www.bailii.org/ew/cases/EWHC/Ch/2011/1589.html) at 12 (see above).

86. In this context see the case of Earl Cowley v. Countess Cowley [1901] App Cas 450, where it was held that a question of whether the divorced wife of an earl could use the title of ‘countess’ was, as a peerage-related matter, outside the jurisdiction of the ordinary courts. It follows that any aspect of a peerage, including those not related to the question of a right to sit and vote in the House of Lords, is outside the jurisdiction of the ordinary courts and solely within the jurisdiction of the Committee for Privileges and Conduct of the House of Lords.

87. If the use of the title of ‘countess’ by the divorced wife of an earl (who is most definitely not a peer herself of course) is a peerage-related matter which is within the exclusive jurisdiction of the Committee, then an actual claim to a peerage must also be within the exclusive jurisdiction of the Committee, whoever that claim is made by and whatever the legal grounds. <u>It is the nature of the claim that matters (a peerage-related matter), not the type of person who is making the claim. In other words, a person who is not a peer can make a claim which is a peerage-related matter within the exclusive jurisdiction of the Committee.</u>

88. If I claim to be a peer, which I what I am claiming, Lord McFall of Alcluith has no jurisdiction to say that I am not a peer. In asserting such a thing, he is not only consciously usurping the jurisdiction of the Committee (House of Lords), he is deliberately preventing a matter from being properly considered by the Committee (House of Lords). He is preventing the Committee (House of Lords) from fulfilling its proper function (exercising its jurisdiction).

89. This is a criminal offence, being both an attempt to pervert the course of justice (because considering a peerage claim is a judicial process) and misconduct in public office. This applies to the Lord Speaker as well, particularly in light of the

fact that there are currently four feudal baronies recorded on the Roll of the Peerage, as I explain below. **(Question: *'Even if Lord McFall of Alcluith and the Lord Speaker have any jurisdiction to rule on what is and what is not a peerage, which they don't, how can they assert that a feudal barony is not a peerage when there are currently four feudal baronies recorded as peerages on the Roll of the Peerage, including a title held by the Prince of Wales, the Dukedom (Duchy) of Rothesay?'*)**

90. Both the Lord Speaker and Lord McFall of Alcluith are subject to the criminal law in the same way as anyone else (for which see below). It is important to note, in this context, that I fully explained the exclusive nature of the Committee's jurisdiction in peerage matters in my petition, so they cannot claim that they honestly believed they had any authority/jurisdiction to rule on/determine a peerage claim.

Inability to act even with jurisdiction

91. Even if Lord McFall of Alcluith has such a jurisdiction (which he doesn't), his complete ignorance of peerage law and, in particular, the peerage law of Scotland, would disqualify him from exercising that jurisdiction. Note, in this context, that when the Committee considers a peerage claim, it is required by the Standing Orders to include as members three current holders of high judicial office. This is clearly because it is recognized that the Committee would not be competent to assess a peerage claim without the appropriate legal expertise, which means that the idea that someone with no relevant legal knowledge, like Lord McFall of Alcluith, can dismiss a peerage claim on his own authority is utter nonsense.

92. It will be noted that Lord McFall of Alcluith gave no reasons for his 'decision'; he simply made an unsupported assertion to the effect that a Scottish feudal barony is not a peerage (Saying 'I am satisfied' is not a reason, it is a conclusion). There is a general duty to give reasons for any judicial decision, which this is, as per English v. Emery Reimbold & Strick Ltd. [2002] EWCA Civ 605 (http://www.bailii.org/ew/cases/EWCA/Civ/2002/605.html) at 6, where it was said *'This duty is a function of due process, and therefore of justice.'* Failure to give reasons is grounds for appeal in and of itself and is also a breach of the Article 6 ECHR right to a fair trial.

93. This means that even if Lord McFall of Alcluith had the jurisdiction to do what he did (which he didn't), he was guilty of a fundamental breach of due process, and therefore of justice. However, in view of Lord McFall of Alcluith's complete ignorance of peerage law, this conduct is hardly surprising - but his willingness to spout authoritatively on a subject he knows nothing about is still shocking for a man who is Chairman of the Committee responsible for overseeing the conduct of members of the House of Lords.

Conflict of interest

94. Even if he has such a jurisdiction and he is competent to exercise that jurisdiction, he would have to declare a potential conflict of interest, which arises from his previous dealings with me, and leave it to the appropriate authority to determine whether this potential conflict of interest requires that he recuse himself.

95. The attached letter, which I wrote to Mr. McFall, as he then was, when he was Chairman of the Treasury Select Committee, and which was published as part of the official report on the banking crisis, explains the matter.

96. In essence, I accused Mr. McFall, as he then was, of not just failing to hold the government (executive) to account for its failure to properly regulate the banks, but of actively preventing the Treasury Select Committee from holding the government to account for that failure. As Chairman of the Treasury Select Committee he did the exact opposite of what he was supposed to do; he protected the government from scrutiny when it was his duty to hold the government to account on behalf of Parliament.

97. I asserted that Mr. McFall was therefore personally responsible, in large part, for the weak regulatory regime in the UK which largely caused the banking crisis of 2007/8. This meant that the man who was in charge of carrying out an enquiry into the banking crisis (the Treasury Select Committee enquiry of 2008/9) was, in fact, largely responsible for causing that crisis in the first place. Mr. McFall could not have done more damage to the UK economy if he had actively tried to sabotage it. Millions have suffered as a result.

98. I knew about Mr. McFall's conduct because I tried to draw the attention of the Treasury Select Committee to the failure of the Financial Services Authority (FSA), which the Treasury Select Committee supervises, to properly regulate the financial services sector in the UK, and Mr. McFall fought what I can only describe as an effective 'rear-guard action' over a period of several years to prevent the Treasury Select Committee from even considering my allegations (which I raised as a Chartered Accountant* on the advice of the Institute of Chartered Accountants in England and Wales (letter to me from the ICAEW's Ethics Advisory Service dated 13/12/2002 ref: IC/DMD/E25756) and as an Audit Manager within a major UK bank who had become aware of huge financial irregularities, amounting to many billions of pounds within that bank and other financial institutions). My career was ruined as a result of my whistle-blowing and I have not worked since 2003.

    *Unlike Mr. McFall I was both professionally qualified and experienced in banking, both as an employee and as an external auditor working for one of the major international firms.

99. There is no need to rely on my allegations concerning Mr. McFall, the matter can be proved by applying simple logic to well-known facts, which shows that I acted for good reasons and not out of spite. The role of the supervisor of a public body is to ensure that the public body does its job properly. If the public body does not do its job properly, then the supervisor has clearly failed, on some level, to do his or its job. The FSA was supervised by the Treasury Select Committee, of which Mr. McFall was Chairman from 2001 to 2010. In 2009 Lord Turner, one-time head of the FSA, said that the FSA had *'not been fit for purpose for much of the past decade'*, say 2001 to 2009, a period which rather neatly matches Mr. McFall's chairmanship of the Treasury Select Committee. The FSA was, of course, eventually abolished in 2013 and replaced by the Financial Conduct Authority and the Prudential Regulation Authority. Can you think of another major regulatory body which performed its job so badly that it had to be abolished (although it actually just changed its name, moved to new offices - at vast public expense - and re-jigged its procedures)? Is this fact not a measure of the effectiveness of the supervision of the FSA by the Treasury Select

Committee, and also of the conduct of that Committee's Chairman, Mr. McFall? In short, Mr. McFall did such a bad job that the body he supervised had to be abolished. Even if this resulted from incompetence rather than active corruption, Mr. McFall is still to blame because he must have been aware of the fact that he was not competent to do the job, but he continued to act nonetheless. What my allegations, backed by relevant correspondence, prove is that Mr. McFall was not incompetent, he was actively corrupt and worked hard to ensure that the FSA was not effectively supervised. He did this for party political reasons. A measure of the damage that resulted from his conduct (and there can be no doubt at all that lack of effective regulation of the financial services sector was at the heart of the banking crisis of 2007/8), is the fact that real wages have hardly recovered from the pre-banking-crisis levels even now, some ten years later. Tens of millions of people have been affected, including all Mr. McFall's constituents. In short, there is a strong case for asserting that Mr. McFall has caused more economic harm to this country than anyone else in history because it was his job to guard the guardians - and he did not do so. *Quis custodiet ipsos custodies?* Not Mr. McFall.

100. The trail is therefore clear, as follows:

    Banking crisis >>> (caused by) >>> Lack of effective regulation of the financial services sector by the FSA* >>> (caused by) >>> Lack of effective oversight of the FSA by the Treasury Select Committee >>> (caused by) >>> John McFall, Chairman of the Treasury Select Committee >>> (leading to) >>> Serious (nearly fatal) economic harm to the UK.

    *The point being that effective regulation could undeniably have avoided or substantially mitigated the worst effects of the banking crisis.

101. Nonetheless, Mr. McFall was named Which? Consumer Champion for his efforts to improve financial services for consumers.* When Mr. McFall announced his retirement as an MP, Scottish Secretary Jim Murphy said: *"John had the responsibility of chairing the Treasury Select Committee during the biggest banking crisis since the Second World War. His defence of the interests of consumers and families who relied on the banks was passionate, right and absolute. He was a man on the right side of so many arguments and someone I respect enormously. I am sure his contribution to Scottish public life will continue."* (*''Consumer champion' MP to stand down'*, 29/1/2010, http://news.bbc.co.uk/1/hi/scotland/8488656.stm).

    *https://www.which.co.uk/news/2010/01/which-consumer-champion-award-goes-to-john-mcfall-194763/

102. In Pinochet, Re [1999] UKHL 52 (http://www.bailii.org/uk/cases/UKHL/1999/52.html), Lord Browne-Wilkinson said (my emphasis):

    '<u>As I have said, Senator Pinochet does not allege that Lord Hoffmann was in fact biased. The contention is that there was a real danger or reasonable apprehension or suspicion that Lord Hoffmann might have been biased, that is to say, it is alleged that there is an appearance of bias not actual bias.</u>

    The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is

indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.'

103. If friendship with a party is an interest which requires recusal, or the overturning of a decision if it has already been made (as happened in Re Pinochet), then hostility (or just a reasonable likelihood of hostility based on the circumstances) must have the same consequence. It follows that Lord McFall of Alcluith's 'decision' must be overturned even if he had the power to make that 'decision' (he didn't) and was not disqualified by his total ignorance from making it in any event (he was).

104. In summary, even if Lord McFall of Alcluith had the jurisdiction to do what he did (he didn't), and even if he had sufficient relevant knowledge (he didn't), his decision still could not stand because of the conflict of interest.

Scottish feudal baronies are already recorded on the Roll of the Peerage

105. One point which I must emphasize is that my peerage claim relates to a Scottish feudal barony which is also a regality. A regality in Scotland is the equivalent of a county palatine in England, such as the Duchies of Cornwall and Lancaster; it was an area where a person exercised the entire royal authority, to the exclusion of the King and his officers (The King's writ did not run in regalities/palatinates).

106. As I explain in the attached petition, there are currently four Scottish feudal baronies recorded on the Roll of the Peerage. These are the Dukedom (Duchy) of Rothesay, which is held by the Prince of Wales, the Earldom of Mar, the Earldom of Sutherland and the Barony of Torphichen. The Dukedom (Duchy) of Rothesay and the Earldom of Sutherland are also regalities.

107. In legal terms, my barony/regality is the exact equivalent of the Dukedom (Duchy) of Rothesay, even to the extent of being similarly protected by an Act of the Scottish Parliament, as explained in my petition.

108. You will appreciate that the logic is simply that if these Scottish feudal baronies are properly regarded as peerages (and my petition explains why they are properly regarded as peerages) and are recorded on the Roll of the Peerage as such, then my feudal barony must also be a peerage and should be recorded on the Roll of the Peerage as such.

109. Conversely, if my feudal barony is not peerage then neither are these four feudal baronies and they must be removed from the Roll of the Peerage accordingly, even though they have been on the Roll (originally the Union Roll) for over 400 years.

110. This is the key element of my peerage claim, which should give you confidence that my claim is *prima facie* soundly based and is not merely frivolous. It might also explain why the 'authorities' are so determined to bury my claim.

111. Clearly, there may be 'claims' which can be dismissed as simply nonsensical ("My parrot claims to be the Duke of Newcastle."), but, even here, it is the Committee as a whole which should do the dismissing, since only it has jurisdiction in such matters. This is not one of those cases, for the reason given above.

My right to have my peerage claim properly considered

112. As was said in Mereworth v. Ministry of Justice [2011] EWHC 1589 (Ch) (http://www.bailii.org/ew/cases/EWHC/Ch/2011/1589.html) at 12 (my emphasis):

'Lord Birkenhead, the Lord Chancellor, said [Viscountess Rhondda's claim [1922] 2 AC 339] *that* ***it was the duty of the Committee to report into the question*** *whether Viscountess Rhondda was entitled to receive a Writ of Summons. As he put it:*

"The writ is not to be issued capriciously or withheld capriciously at the pleasure of the Sovereign or of this House. It is to be issued, or withheld, according to the law relating to the matter, and if, under that law, it appears that there is a debt of justice to the petitioner in that matter, the writ will issue and, if not, it cannot issue."'

113. Note the words *'duty of the Committee'* in Lord Birkenhead's statement above. This is a decision of the Appellate Committee of the House of Lords (now the Supreme Court) and is therefore binding in law.

114. Erskine May (*'A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament'*, 1851, Ch. 19, p. 381), the recognized authority on parliamentary procedure and practice, states (and I assume that the current version, the 24th edition, says the same): *'The right of petitioning the Crown and Parliament for redress of grievances is acknowledged as a fundamental principle of the constitution* [my emphasis]*.'* Clearly, a person has a 'grievance' (basis for a complaint), and can therefore seek redress, if he is the holder of a title but is not recognized as the holder of that title, as would be the case with any owner of any property or any holder of any rights who is not acknowledged as the owner of that property or holder of those rights.

115. As authority for this proposition, Erskine May cites the Bill of Rights 1688 (*'Right to petition - That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall.'* and Magna Carta 1297 (*'No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right* [my emphasis]*.'*).

116. Lord McFall of Alcluith has attempted, successfully so far, to deny me my fundamental constitutional right of having my petition properly considered; a right confirmed by the Appellate Committee of the House of Lords (now the Supreme Court) in Viscountess Rhondda's claim [1922] 2 AC 339 and by Erskine May, the recognized authority on Parliamentary procedure, as explained above.

Consequences of failure to properly consider my peerage claim

117. If this matter is not taken forward and properly considered by the Committee, then I will have no option but to bring a private prosecution in the Westminster

Magistrates' Court against Lord McFall of Alcluith and any other member of the Committee who acts in a similar manner, either by actively preventing my petition from being considered or by failing in their duty to take positive steps to ensure that my petition is properly considered. This applies to officials as well, who are equally liable under the law.

118. I will also take steps to ensure that this matter is raised directly in the House by peers who are not members of the Committee.

Private prosecutions

119. In Barry v. Birmingham Magistrates' Court [2009] EWHC 2571 (Admin) (http://www.bailii.org/ew/cases/EWHC/Admin/2009/2571.html), it was said at 7:

'The general principle is, as stated in Stone's Justices' Manual, that the magistrate ought to issue a summons pursuant to an information properly laid unless there are compelling reasons not do so where, for example, there is an abuse of process or impropriety involved. There have been repeated statements by judges of this court that although justices ought to protect their process from abuse, they have no power to stay an otherwise regular prosecution.'

120. With regard to abuse of process, in R v. Bury Justices ex parte Anderton and others [1987] Crim LR 683, the Divisional Court granted certiorari to quash a summons which had been issued by the Bury Justices. The note of the court's decision states (my emphasis):

"The Court should be very slow to quash a summons issued by a Magistrate, if only because the Magistrates' Court itself had ample power to deal with it. However, where it could be clearly shown that the issue of a summons was an abuse of the process of the court and that the allegations which the summons made were oppressive and vexatious, the High Court had power to grant relief by way of judicial review."

121. With regard to the meaning of 'vexatious', in Lord Advocate v. McNamara [2009] ScotCS CSIH_45 (http://www.bailii.org/scot/cases/ScotCS/2009/2009csih45.html) it was said at 31 (my emphasis):

'As we have explained, however, it ['vexatious'] *was (and remains) a familiar term in practice relating to abuses of process, and it has been understood as bearing the same meaning in the 1896 and 1898 Acts. The meaning of the term was considered by Lord Phillips of Worth Matravers MR, delivering the judgment of the court, in Bhamjee v. Forsdick [2004] 1 WLR 88 at paragraph 7:*

"The courts have traditionally described the bringing of hopeless actions and applications as 'vexatious', although this adjective no longer appears in the Civil Procedure Rules: compare RSC Ord 18, r 19(1)(b) with CPR r 3.4(2). In Attorney-General v. Barker [2000] 1 FLR 759 Lord Bingham of Cornhill CJ, with whom Klevan J agreed, said, at p 764, para 19 that 'vexatious' was a familiar term in legal parlance. He added:

'The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by

that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.'"

As Toohey J observed in Jones v. Skyring (at paragraph 33), "there is perhaps some tautology" in a provision which requires that proceedings be vexatious and without any reasonable ground. We respectfully agree with the view expressed in the case of Frost (at paragraph 30) that "legal proceedings may be properly seen as 'vexatious' if they are devoid of reasonable grounds for their institution".'

122. With regard to abuse of process, the Crown Prosecution Service (CPS) guidance (https://www.cps.gov.uk/legal-guidance/abuse-process) says (my emphasis):

'No specific procedure is laid down for raising abuse of process in Magistrates' court, but it is essential that the court hears from both the prosecution and the defence.

In DPP v Gowing (2014) 178 JP 181, it was emphasised that it is important that magistrates who are considering staying proceedings recognise "the exceptional nature of the jurisdiction to stay proceedings". Where there are failures on the part of prosecutors, the power to stay proceedings should not be used to punish prosecutors where a fair trial remains possible.

Prosecutors in the magistrates' courts should always ask the court to order skeleton arguments from both sides (defence first, prosecution response) so that the issues can be identified and the matter properly argued on the basis of agreed facts, principles, and law.'

123. In Tods Murray W.S. v. Arakin Ltd [2010] CSOH 90 it was said at 88 (my emphasis):

'A number of recent cases have considered the scope of abuse of process in Scots law: Shetland Sea Farm v Assuranceforeningen Skuld 2004 SLT 30; Clarke v Fennoscandia (No. 3) 2005 SLT 511; McKie v Macrae 2006 SLT 43; Wright v Paton Farrell 2006 SC 404; Tonner v Riach 2008 SC 1; Moore v Scottish Daily Record 2009 SC 179; Clarke v Fennoscandia Ltd 2008 SC (HL) 122; and Lord Advocate v McNamara 2009 SCLR 551.

The relevant principles were clearly set out by Lord Gill in Shetland Sea Farm at paragraphs 143 to 146:

a. the court has an inherent power to dismiss a claim where the party pursuing it has been guilty of an abuse of process.

b. it does so to protect the integrity of its procedures by preventing one party from putting the other at an unfair disadvantage and compromising the just and proper conduct of the proceedings

c. it is a drastic power which should only be exercised sparingly

d. it can occur in many ways

i. by pursuing a claim or presenting a defence in bad faith and with no genuine belief in its merits;

ii. by fraudulent means;

iii. for an improper ulterior motive, such as that of publicly denouncing the other party. ['For an improper motive' means that the motive must be improper, which implies absence of a proper motive. So, this condition

does not apply where there is a proper motive even if there is also an improper one.]

e. In cases where a litigant has been guilty of dishonesty in the prosecution of his case, the court must consider whether the dishonesty has made a fair trial of the issue impossible. If it has, the court has a duty to stop the proceedings in order to protect the innocent party from an injustice. But if the dishonesty is found out and desisted from and if, in consequence, a fair trial of the essential claim remains possible, the court ought not to stop the proceedings. To do so in such circumstances would simply be judicial retaliation for the affront to the court.'

124. In R v. Durham Stipendiary Magistrates ex parte Davies (1993) The Times, May 25, 1993, it was said:

"The fact that a private prosecutor is motivated by personal hostility and obsessed with his case is insufficient reason to justify a decision not to commit a defendant to trial."

125. This is a High Court decision and, as such, binding on all Magistrates' Courts.

126. So, even if I am motivated by hostility, which I am not, such a fact could not be used to prevent a private prosecution. Hostility does not make a private prosecution an abuse of process. 'Hostility' means 'feeling ill will towards someone' or 'wishing someone ill'; that is, wishing that something bad happens to someone. So, a person can bring a private prosecution wishing to cause them harm or suffering as a result, but this is not grounds for not allowing the prosecution to proceed. I am not motivated by hostility but by a desire to punish a wrong and obtain justice (recognition of my rights) for myself.

127. It follows that magistrates can only refuse to issue a summons if:

    a. the prosecution has no discernible basis in law (is devoid of reasonable grounds) or;

    b. a fair trial is not possible for some reason (such as a delay in bringing the prosecution which seriously prejudices the accused) or;

    c. the prosecution is an 'abuse of process', which implies, at the very least, an attempt to use a legal process in an illegitimate way (not for the intended purpose), such as for a collateral purpose (for example, threatening prosecution for some unrelated conduct if someone doesn't pay a debt, so the collateral purpose is to get the debt paid). But, surely, a person should be held to account if he commits an offence, regardless of the motives (purpose) of the prosecutor? Can it be right that a person who did actually commit an offence can escape punishment as a result of some entirely extraneous factor, like the motives of the prosecutor? How so? In my case, it is clear that I would bring a private prosecution against anyone who acted as Lord McFall of Alcluith has.

It follows that if a summons has at least some discernible basis in law and a fair trial is possible, then it ought not to be stayed, even where there has been some lapse, transgression or failure on the part of the prosecutor. This brings us back to the question: *'How can it be said that my peerage claim is devoid of reasonable grounds when there are currently four feudal baronies recorded as peerages on the Roll of the Peerage?'*

128. The relevant offences are misconduct in public office and attempting to pervert the course of justice as described below.

The common law offence of attempting to pervert the course of justice

129. Attempting to pervert the course of justice, is a common law (criminal) offence carrying a possible life sentence. Note that an act does not have to actually pervert the course of justice, it merely has to have a tendency to (a risk that it might) pervert the course of justice*. 'The accused's conduct will have a tendency to pervert the course of justice if he has done enough for there to be a possibility, without further action on his part, that a perversion of the course of justice may result; it is irrelevant that the possibility does not materialise'* (Murray [1982] 2 All ER 225 [1982] 1 WLR 475, CA). The offence includes: *'fabricating, concealing or destroying evidence with intent to influence the outcome of judicial proceedings, civil or criminal whether or not they have yet been instituted…'* (Cotter & Ors, R v [2002] EWCA Crim 1033 at 18). Concealing evidence must include presenting evidence in such a way that it is not properly understood; that is, being deliberately misleading about what the evidence shows. This must include a situation where some writing clearly says one thing and the person asserts that it says something else. For instance, saying that a regulation which says 'You cannot drive a car on a Saturday' actually says 'You can drive a car on a Saturday'. In Archer, R. v [2002] EWCA Crim 1996 it was said at 63: *'We have already indicated that there is not, in our judgment, any distinction as to the level of sentence to be drawn according to whether the proceedings contaminated were of a civil or criminal nature.'*

130. Such conduct will also be malicious in the legal sense. In Rhodes v. OPO & Anor [2015] UKSC 32 it was said at 41:

    'Lord Herschell said in his judgment in Allen v. Flood at p 124: "More than one of the learned judges who were summoned refers with approval to the definition of malice by Bayley J in the case of Bromage v. Prosser: 'Malice in common acceptation of the term means ill-will against a person, but in its legal sense it means a wrongful act done intentionally without just cause or excuse.' It will be observed that this definition eliminates motive altogether."'

The common law offence of misconduct in public office (and the tort of misfeasance in public office)

131. The common law (criminal) offence of misconduct in public office carries a possible life sentence. Conduct amounting to the crime will also amount to the equivalent tort (civil wrong) of misfeasance in public office. The offence/tort occurs where (1) a public officer acting as such, (2) wilfully neglects to perform his duty and/or wilfully misconducts himself, (3) to such a degree as to amount to an abuse of the public's trust in the office holder, (4) without reasonable excuse or justification (Attorney General's Reference No. 3 of 2003 [2004] EWCA Crim 868 at 61).

132. On this basis, (1) the official must act wilfully and (2) the misconduct must be serious.

133. With regard to the requirement for the misconduct to be 'wilful', I think it is enough to say that misconduct will not result from mere inadvertence; that is, a mistake. If an act is not inadvertent then it is deliberate; wilful therefore means deliberate. This includes wilfully (that is, deliberately) disregarding the risk that the conduct is unlawful; in other words, recklessness as to the unlawfulness of

the conduct. In Rhodes v. OPO & Anor [2015] UKSC 32 it was stated at 84: *'A person acts recklessly with respect to a result if he is aware of a risk that it will occur and it is unreasonable to take that risk having regard to the circumstances as he knows or believes them to be.'*

134. With regard to the requirement for the misconduct to be serious, in Attorney General's Reference No. 3 of 2003 [2004] EWCA Crim 868 at 57 it was stated (my emphasis):

'As Lord Widgery CJ put it in Dytham, the leading modern criminal case: the element of culpability "must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment". The constitutional context has changed but the rationale for the offence remains that stated by Lord Mansfield in Bembridge: those who hold public office carry out their duties for the benefit of the public as a whole and, if they abuse their office, there is a breach of the public's trust. By way of example, the failure of the constable in Dytham to act, in the absence of a justification or excuse, crossed the threshold for this offence. It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively as in G, will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer. A default where the consequences are likely to be trivial may not possess the criminal quality required; a similar default where the damage to the public or members of the public is likely to be great may do so. In a case like the present, for example, was the death or serious injury of the man arrested the likely consequence, viewed subjectively, of inaction, or was it merely an uncomfortable night? There will be some conduct which possesses the criminal quality even if serious consequences are unlikely but it is always necessary to assess the conduct in the circumstances in which it occurs.'

135. While there is no requirement to show that any harm resulted from the misconduct, at least with regard to the crime rather than the tort, the consequences of the conduct may be relevant to the question of whether the misconduct was sufficiently serious to constitute an offence. There may be situations where the misconduct amounts to an offence even though a serious consequence was unlikely or did not happen (Attorney General's Reference No. 3 of 2003 [2004] EWCA Crim 868 at 58). In my view, this is likely to be the case where the nature of the public office is such that the very highest standards of conduct are demanded of the office holder, as in the case of a judge for instance.

136. This introduces a rather novel legal concept, namely that a crime has to be serious before it is prosecuted. After all, the courts do not say that if a person steals £10 (as opposed to £10,000) that does not amount to theft. No, the offence has still been committed and will (or should) be prosecuted; it is just that the seriousness of the offence will be taken into account in deciding upon the sentence. I know of no general *de minimis* concept in criminal law; theft of £1 is theft; an unwelcome kiss is battery (any unlawful physical contact) and so on. A youth who stole a £3.50 bottle of water during the 'London riots' was sentenced to six months in prison *('London riots: Lidl water thief jailed for six months'*, Daily Telegraph, 11/8/2011), clearly because the courts wanted to

'send a message'. So why should this *de minimis* concept apply in respect of what is, by its very nature, a very serious offence; the deliberate abuse of a public office? Do we not also need to 'send a message' to public officials who abuse their positions, and, surely, the more important the position, the less we ought to tolerate any misconduct and the more severe the 'message' (punishment) should be?

137. Since any deliberate abuse of an important public office, and particularly a judicial office, is an abuse of the public's trust and therefore not acceptable, if follows that any deliberate abuse of a judicial office should be regarded as serious. 'Seriousness' should be measured both by the harmfulness of the result and by the acceptability of the conduct by reference to the public office held. If the public expects an officeholder to observe the highest standards of conduct, then the officeholder abuses that trust if he does not observe the highest standards of conduct.

138. In Attorney General's Reference No. 3 of 2003 [2004] EWCA Crim 868 at 51 it was stated (referring to Three Rivers District Council v. Governor & Company of the Bank of England (No.3) [2003] 2 AC 1): *'Lord Hutton, at page 225A cited a passage in the judgment of Brennan J in the High Court of Australia in Northern Territory of Australia v. Mengel 69 ALJR 527, at page 547: "It is the absence of an honest attempt to perform the functions of the office that constitutes the abuse of the office. Misfeasance in public office consists of a purported exercise of some power or authority by a public officer otherwise than in an honest attempt to perform the functions of his or her office whereby loss is caused to a plaintiff* ['loss' only applies with respect to the tort]. *Malice, knowledge and reckless indifference are states of mind that stamp on a purported but invalid exercise of power the character of abuse of or misfeasance in public office …".'*

139. Did Lord McFall of Alcluith make an honest attempt to perform the functions of his office? Given his complete lack of knowledge of the relevant law, can his assertion that a feudal barony is not a peerage be anything other than reckless or intentionally malicious (in the legal sense explained above), even if he had, or believed he had, any jurisdiction to rule on the matter?

Parliamentary Privilege - Introduction

140. The question arises as to whether Lord McFall of Alcluith, and others who might be subject to criminal prosecution, are protected from prosecution by parliamentary privilege. The answer is 'No, they are not protected' for the following reasons.

141. While considering the matters described below, it is important to keep in mind one question in relation to Lord McFall of Alcluith's conduct: *'If consideration of, and the subsequent decision about, a peerage claim by the Committee for Privileges and Conduct can properly be described as 'proceedings in Parliament', and therefore be covered by Parliamentary Privilege, can the unlawful conduct of one Member, even if he is the Chairman of the Committee, outside his authority and designed to obstruct such 'proceedings in Parliament', or even to prevent such 'proceedings in Parliament' from taking place at all, be itself properly described as 'proceedings in Parliament' and therefore covered by Parliamentary Privilege?'*

142. To answer 'Yes' to this question would mean that something that is properly proceedings in Parliament (and is therefore valid) and something designed to

unlawfully obstruct such proceedings or prevent them taking place (and is therefore invalid) are both treated as equally proper and valid proceedings in Parliament. Such a thing is a logical impossibility and therefore patently absurd; if x is valid (lawful), then the opposite or negation of that thing (y) cannot also be valid (lawful).

143. Of course, this train of logic depends upon the acts done by Lord McFall of Alcluith being outside his jurisdiction and therefore unlawful. But, given that they clearly were so (we have already established on high legal authority that the Committee, in effect the House, not any member of the Committee, has exclusive jurisdiction in peerage matters), how can any act by a person which is outside his jurisdiction, and therefore unlawful, be considered 'proper' or 'valid' in this sense at all? And if it is not proper in this sense (not properly part of proceedings in Parliament), it cannot be covered by parliamentary privilege.

144. Parliamentary privilege was extensively examined in Chaytor & Ors, R v (Rev 2) [2010] UKSC 52 (http://www.bailii.org/uk/cases/UKSC/2010/52.html), so there is little point in going over the ground again, apart from the following summary.

Parliamentary Privilege - Courts decide extent of privilege

145. The first point to note is that it is the ordinary courts which decide on the extent of parliamentary privilege; that is, whether something is or is not covered by parliamentary privilege. In Chaytor & Ors, R v. (Rev 2) [2010] UKSC 52 (http://www.bailii.org/uk/cases/UKSC/2010/52.html) it was said at 16:

'Although the extent of parliamentary privilege is ultimately a matter for the court, it is one on which the court will pay careful regard to any views expressed in Parliament by either House or by bodies or individuals in a position to speak on the matter with authority.'

146. In other words, the mere fact that Parliament by resolution, or a Committee of either House by resolution, or a member of the House of Commons or the House of Lords, or an official of either House, asserts that something is subject to parliamentary privilege does not make it so, unless this is done by Act of Parliament of course.

147. Thus, a court cannot refuse to consider an application to it on the grounds that the matter is covered by parliamentary privilege and therefore outside its jurisdiction without first assessing whether the matter is actually covered by parliamentary privilege, concerning which see the following paragraphs.

Parliamentary Privilege - 'Exclusive cognisance' and impact of Article 6 ECHR

148. Parliamentary privilege is designed to protect proceedings in Parliament (principally what is said in debate in Parliament) from outside interference and thus provides immunity from civil suit and criminal prosecution for anything said or done which is properly part of such proceedings.

149. Article 9 of the Bill of Rights, the most important statutory expression of parliamentary privilege, states that *'the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of Parliament.'*

150. Such matters (things which are properly part of such proceedings) are within the 'exclusive cognisance', as it is called, of Parliament and are therefore outside the jurisdiction of the ordinary courts. This means that Parliament is

responsible for regulating its own affairs, to the extent that they are subject to parliamentary privilege.

151. In assessing whether a crime is within the 'exclusive cognisance' of Parliament, it is necessary to consider what Parliament can actually do to deal with that crime (in terms of charging the accused, hearing the case and imposing punishment), because if Parliament cannot properly deal with a crime, how can that crime be within Parliament's jurisdiction? This is because 'jurisdiction' must include the power to properly deal with a crime; which means that if you can't properly deal with a crime then you have no proper jurisdiction in respect of that crime.

152. Now, Parliament has no proper criminal jurisdiction; all it can do is to find a person in contempt and, theoretically at least, admonish, fine or imprison him. Thus, Parliament cannot even charge a person with or find him guilty of the appropriate offence (say, theft); its powers of punishment are largely theoretical, not having been used for many years; it cannot be claimed to be fully independent; it is not bound by precedent, criminal procedure rules, rules of evidence and so on in the same way as the ordinary courts. Thus, it cannot be said that Parliament has proper jurisdiction over anything other than minor misconduct because the word 'jurisdiction' necessarily implies the ability to deal with a matter in a proper and lawful way. The only true jurisdiction in respect of crimes lies with those courts which have adequate powers to properly deal with those crimes; that is, the ordinary criminal courts. Anything else is effectively a 'get out of jail free card' for members of either of the Houses of Parliament who commit crimes, which is why those MPs accused of fiddling their expenses tried so hard to have the matter dealt with by Parliament rather than the courts. They knew that the most they would get from Parliament would be a slap on the wrist, as opposed to what they deserved, which was imprisonment.

153. If a 'court' cannot properly deal with a crime, can it be said that a trial for that crime is fair, as required by Article 6 of the European Convention on Human Rights (ECHR)? How can a trial be fair in such circumstances (a court which is not independent, cannot charge the accused with the appropriate crime, does not follow proper court procedure and has limited powers of punishment)? It can't. In my view, this factor alone (breach of Article 6 ECHR) would be sufficient to exclude the jurisdiction of Parliament.

154. The Joint Committee on Parliamentary Privilege Report *'Parliamentary Privilege'* (https://publications.parliament.uk/pa/jt201314/jtselect/jtprivi/30/3005.htm) states in para. 52:

'Nigel Pleming QC said, "As soon as you introduce a regime of penalty, if it is going to be a prison system, it is clearly criminal because it will apply to the non-Members of the House". The significance of this observation is that such a regime would thus engage Article 6 of the European Convention on Human Rights, which provides that "In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The Deputy Leader of the House of Commons, Rt Hon Tom Brake MP, told us: "The Government does not believe that the current arrangements provide the kind of safeguards that individuals have a right to expect of any body with the power of prosecution ... in order for the defendant in any such proceedings to be given a

fair hearing, the House would have to significantly change its current procedures and practices".'

155. The government has therefore confirmed that Parliament cannot provide a fair trial in such a situation and that any such proceedings will be a breach of Article 6 ECHR as a result. **It follows that it is unlawful for a court to recognize the jurisdiction of Parliament in such a situation.**

156. As was said in Chaytor & Ors, R v (Rev 2) [2010] UKSC 52 at 61:

'There are good reasons of policy for giving article 9 a narrow ambit that restricts it to the important purpose for which it was enacted – freedom for Parliament to conduct its legislative and deliberative business without interference from the Crown or the Crown's judges. The protection of article 9 is absolute. It is capable of variation by primary legislation, but not capable of waiver, even by Parliamentary resolution. Its effect where it applies is to prevent those injured by civil wrongdoing from obtaining redress and to prevent the prosecution of Members for conduct which is criminal. As to the latter, Parliament has no criminal jurisdiction. It has limited penal powers to treat criminal conduct as contempt. These once included imprisonment for a limited period. As to this Lord Denman CJ commented at p 114 in Stockdale v Hansard:

"The privilege of committing for contempt is inherent in every deliberative body invested with authority by the Constitution. But, however flagrant the contempt, the House of Commons can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offences being committed the day before a prorogation, if the House ordered his imprisonment but for a week, every Court in Westminster Hall and every Judge of all the Courts would be bound to discharge him by habeas corpus."

Imprisonment has not been imposed in recent times and the same is true of the theoretical power to fine. Nor is it clear that Parliament is in a position to satisfy all the requirements of article 6 which apply when imposing penal sanctions – see Demicoli v Malta (1991) 14 EHRR 47. 62.

Thus precedent, the views of Parliament and policy all point in the same direction. Submitting claims for allowances and expenses does not form part of, nor is it incidental to, the core or essential business of Parliament, which consists of collective deliberation and decision making.'

Parliamentary Privilege - Doctrine of necessity

157. Whether something can be properly regarded as being a part of proceedings in Parliament depends upon whether it is a necessary part of such proceedings. This is called the 'doctrine of necessity', which was most cogently expounded in the 2005 case of Canada (House of Commons) v. Vaid [2005] 1 SCR 667 (as quoted in Chaytor & Ors, R v (Rev 2) [2010] UKSC 52), where it was said at 4 (my emphasis):

'If the existence and scope of a privilege have not been authoritatively established, the court will be required to test the claim against the doctrine of necessity - the foundation of all parliamentary privilege. In such a case, in order to sustain a claim of privilege, the assembly ... must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative

and deliberative body, including the assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their legislative work with dignity and efficiency.'

158. The Joint Committee on Parliamentary Privilege Report *'Parliamentary Privilege'* (https://publications.parliament.uk/pa/jt201314/jtselect/jtprivi/30/3002.htm) states in para. 29:

'In the absence of an exhaustive definition of "proceedings in Parliament", certain matters are generally accepted as falling within the terms of Article 9, and in such cases Parliament's sole jurisdiction may be said, in the terms used in the Vaid judgment, to have been "authoritatively established". These matters include:

- *the procedures adopted by the two Houses: the courts may not challenge the means by which legislation was passed or decisions reached;*
- *proceedings in Parliament: words spoken in the course of debate, votes cast, or decisions taken by either House;*
- *actions of Members, officeholders or officials which are necessarily linked to proceedings.'*

159. In the current context, I believe that it is the last bullet point which is relevant. So, the issue is whether Lord McFall of Alcluith's acts were 'necessarily linked to' (or 'closely and directly connected with') proceedings to such an extent that 'outside interference' in those acts would undermine the proper autonomy of Parliament.

160. Note, in this context, that the first bullet point cannot apply, as far as I can see, because there is no 'procedure adopted' by the House of Lords which allows a single member of the House of Lords, even if he is the Chairman of the relevant Committee, who is completely ignorant of the subject matter, to prevent a petition to the whole House of Lords from being properly considered by the whole House of Lords (which then refers the petition to the Committee if it considers it appropriate to do so).

161. It seems to me that the question here is how 'outside interference' in the form of a private prosecution, or, indeed, a public one, can be said to undermine the autonomy of Parliament (ability of Parliament to do its job properly), when the acts being interfered with (the acts of Lord McFall of Alcluith) themselves interfere in (impede) the ability of Parliament to do its job properly.

162. To interfere in an interference is to attempt to remove that interference and thus re-enable the proper functioning of whatever was being interfered with (the proper conduct of Parliamentary business in this case). This is a version of the argument; *'It cannot be evil to oppose evil.'*

163. In short, it seems to me that there are no arguments which can legitimize the idea that it is the proper business of Parliament to obstruct the proper business of Parliament.

164. Inevitably, a member interfering in proceedings in Parliament is going to be 'closely and directly connected with' the proceedings being interfered with, but the mere closeness of the connection does not make the act valid; what matters is whether the act is a proper, and thus necessary, part of the

proceedings, in the sense of enabling the proceedings to do what they are designed to do, as opposed to preventing the proceedings from doing what they are designed to do. In short, an act which legitimately assists the proceedings cannot possibly be equated with an act which illegitimately impedes the proceedings.

165. Thus, speaking in a debate helps the debate to achieve what it is designed to achieve (resolve the matter being debated in the most efficacious way), but one MP punching another MP on the nose during a debate does not. Punching a fellow MP on the nose is clearly closely connected to proceedings in Parliament (at least when one MP punches another because of what that other MP said in debate), but would anyone seriously argue that the aggressor should escape criminal prosecution for that reason? Of course not.

166. This is why the court in Canada (House of Commons) v. Vaid [2005] 1 SCR 667 qualified the doctrine of necessity by reference to **fulfilment of functions**. Necessity (and thus parliamentary privilege) must be assessed by reference to the extent to which the act is necessary to the fulfilment of Parliament's proper functions.

167. By definition, criminal acts (or non-criminal acts) which impede the conduct of Parliamentary business cannot in any way be necessary to the fulfilment of Parliament's proper functions and they must therefore be outside the scope of parliamentary privilege.

Parliamentary Privilege - What 'proceedings in Parliament' does not include

168. Turning to the judgment in Chaytor & Ors, R v (Rev 2) [2010] UKSC 52 (http://www.bailii.org/uk/cases/UKSC/2010/52.html), I note the following.

169. At 28 (my emphasis):

'Erskine May, Parliamentary Practice, 23rd ed (2004), summarises the position as follows at pp 110-111:

"The term 'proceedings in Parliament' has received judicial attention, (not all of it in the United Kingdom) but comprehensive lines of decision have not emerged and indeed it has been concluded that an exhaustive definition could not be achieved. Nevertheless, a broad description is not difficult to arrive at. The primary meaning of proceedings, as a technical parliamentary term, which it had at least as early as the seventeenth century, is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision. An individual Member takes part in a proceeding usually by speech, but also by various recognized forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking."'

170. At 55 (my emphasis):

'At para 103 the Committee expressed the view that Members' correspondence did not form part of parliamentary proceedings:

"Article 9 [Bill of Rights] *protects parliamentary proceedings: activities which are recognisably part of the formal collegiate activities of Parliament."*

The Committee did not recommend the extension of parliamentary privilege to cover Members' correspondence. It commented at para 110:

"There is another consideration. Article 9 provides an altogether exceptional degree of protection, as discussed above. In principle this exceptional protection should remain confined to the core activities of Parliament, unless a pressing need is shown for an extension."'

171. This would appear to mean that a formal communication from a committee would be covered by Parliamentary privilege, but that a communication from an individual member of a committee would not, even if it ostensibly related to committee business.

172. On this basis, proceedings in Parliament means a formal act done in a collective capacity. A single member of a committee, acting informally on his own, is not a 'proceeding in Parliament'. A member acting with delegated authority might be covered, but has the Committee delegated its jurisdiction to determine peerage claims to Lord McFall of Alcluith? Could it delegate that function even if it wanted to? The answer to both questions is 'No'.

Parliamentary Privilege - When the House does not assert exclusive cognisance

173. At 33 (my emphasis):

'The suggestion that article 9 should not be narrowly construed conflicted with an observation of Viscount Radcliffe when giving the advice of the Judicial Committee of the Privy Council in Attorney General of Ceylon v de Livera [1963] AC 103 at p 120. Section 14 of the Bribery Act of Ceylon made it an offence to offer an inducement or reward to a member of the House of Representatives for doing or forbearing to do any act "in his capacity as such member". The issue was the scope of those words. Viscount Radcliffe drew an analogy with article 9. He said:

"What has come under inquiry on several occasions is the extent of the privilege of a member of the House and the complementary question, what is a 'proceeding in Parliament'? This is not the same question as that now before the Board, and there is no doubt that the proper meaning of the words 'proceedings in Parliament' is influenced by the context in which they appear in article 9 of the Bill of Rights (1 Wm & M, Sess 2, c 2); but the answer given to that somewhat more limited question depends upon a very similar consideration, in what circumstances and in what situations is a member of the House exercising his 'real' or 'essential' function as a member? For, given the proper anxiety of the House to confine its own or its members' privileges to the minimum infringement of the liberties of others, it is important to see that those privileges do not cover activities that are not squarely within a member's true function."'

174. It cannot be 'squarely within a member's true function' to do something (rule upon a peerage claim in this case) which he has no authority to do, which means that such an act is not 'proceedings in Parliament' and therefore not protected by parliamentary privilege. This reinforces the point I have made above about Parliament's proper functions; the emphasis is on 'proper' and 'true'.

175. At 82 (my emphasis):

'Erskine May records at pp 162-163 that in cases of breach of privilege which are also offences at law, where the punishment which the Commons has power to

inflict would not be adequate to the offence, or where for any other reason the House has thought proceeding at law necessary, either as a substitute for, or in addition to, its own proceedings, the Attorney General has been directed to prosecute the offender. It is of note that in two of the cases cited the Attorney General was directed to prosecute witnesses to parliamentary committees for "wilful and corrupt perjury" – CJ (1860) 258 and CJ (1866) 239. No instance is cited beyond the 19th century and a footnote records that on two occasions in the 1970s the House authorities informally invited the police to consider prosecuting those responsible for gross misbehaviour in the gallery. [83] Thus the House does not assert an exclusive jurisdiction to deal with criminal conduct, even where this relates to or interferes with proceedings in committee or in the House.'

176. Thus, even where conduct relates to proceedings in committee, if the conduct is criminal then Parliament will not assert exclusive jurisdiction, which means that Parliament recognizes that the ordinary criminal courts also have jurisdiction.

Parliamentary Privilege - When the ordinary courts take precedence

177. At 84 (my emphasis):

'On 3 April 2008 a meeting took place between the Chairman of the Committee on Standards and Privileges, the Parliamentary Commissioner for Standards and the Commissioner of Police of the Metropolis. Following this an agreed statement was released:

"All parties agreed that, other than in the limited context of participation in proceedings in Parliament, Members of Parliament are in no different position in respect of alleged criminal behaviour than any other person. ***The Chairman reiterated the Committee's belief in the general principle that criminal proceedings against Members, where these are considered appropriate, should take precedence over the House's own disciplinary proceedings.*** *The meeting discussed how the respective parties might coordinate their activities to ensure the effective delivery of this principle.*

Where the Metropolitan Police receive information which suggests a Member of Parliament may have committed a criminal offence, they will take the decision on whether to institute inquiries on their own initiative, on the same basis as they would in any other case, and without regard to whether the same information had formed any part of a complaint to the Parliamentary Commissioner. The Metropolitan Police undertook to inform the Parliamentary Commissioner in the normal course of events if they were considering initiating criminal inquiries into a Member, with a view to establishing whether the alleged conduct was also the subject of a complaint under the Code.

The Parliamentary Commissioner confirmed that he had regard, where appropriate, to the possibility of criminal behaviour when investigating complaints he received against Members of Parliament. He would continue the practice in specific cases of liaising with the Metropolitan Police or other relevant force whenever he considered it appropriate to do so, initiating the process at the earliest opportunity. All parties welcomed this.

If at any point in his investigation of a complaint, the Parliamentary Commissioner considers that there are sufficient grounds to justify reporting the matter to the police for them to consider a criminal inquiry, he confirmed that he would submit a recommendation to that effect to the Committee on Standards

and Privileges who would decide whether such a report should be made. Where this was done, the Chairman confirmed that the Committee would normally expect the Parliamentary Commissioner to suspend his inquiries until the question of possible criminal proceedings had been resolved. The Parliamentary Commissioner and the Committee would follow similar procedures if informed by the police that they are considering initiating criminal inquiries into a matter which was also the subject of a complaint.

The Chairman also confirmed that if in the course of the Committee's consideration of the outcome of the Commissioner's investigation of a complaint it concluded that there were sufficient grounds to justify a report to the police, it would normally expect to advise the House accordingly, and defer reporting substantively on the complaint until the question of possible criminal proceedings had been resolved."'

178. This makes it clear that, <u>where appropriate</u>, and where both Parliament and the ordinary criminal courts have jurisdiction, the ordinary criminal courts take precedence.

179. The question of <u>appropriateness</u> must be judged by reference to the doctrine of necessity and taking into account whether Parliament can deal properly with the matter in terms of being able to provide a fair trial in accordance with Article 6 ECHR, which it won't be able to do in relation to any serious criminal conduct, such as an attempt to pervert the course of justice.

180. It follows that any conduct which gives rise to a risk that the course of justice might be perverted, or similarly serious criminal conduct, should be tried in the ordinary criminal courts. Parliament has accepted this and the Supreme Court has ruled to that effect in Chaytor & Ors, R v (Rev 2) [2010] UKSC 52.

<u>Parliamentary Privilege - Those acting in an official capacity</u>

181. The 2013 Joint Committee on Parliamentary Privilege Report 'Parliamentary Privilege' says at para. 236 (my emphasis):

'In evidence to the 1999 Joint Committee the then Lord Chief Justice of England (Lord Bingham of Cornhill) and the then Lord President of the Court of Session (Lord Rodger of Earlsferry) both stressed the development of qualified privilege at law and the degree of protection it provides to those acting in an official capacity and without malice:

"<u>So long as the member handles a complaint in an appropriate way</u>, he is not at risk of being held liable for any defamatory statements in the correspondence. Qualified privilege means a member has a good defence to defamation proceedings <u>so long as he acted without malice, that is, without some dishonest or improper motive</u>".'

182. Although referring to civil liability in relation to the constituency correspondence of an MP, a general principle can be extracted from these words, and that is that even though parliamentary privilege does not cover a 'member's correspondence', a member enjoys a qualified privilege which extends to 'those acting in an official capacity', as long as he acts without malice. This means 'malice' in the legal sense of <u>a wrongful act done intentionally without just cause or excuse</u> (see above), because an act done without good cause is an act done without a proper motive and thus with an improper motive (absence of a proper motive is clearly improper). In more

general terms, the principle is that a member is liable under both the civil and criminal law if he does not handle a matter 'in an appropriate way'.

183. This begs the question as to what 'good cause' Lord McFall of Alcluith had to do what he did and whether he handled my petition in an appropriate way given (1) his lack of jurisdiction, (2) his lack of knowledge of peerage law, (3) the exclusive jurisdiction of the House of Lords in such matters, (4) my fundamental constitutional right to petition the House and (5) the fact that there are currently four Scottish feudal baronies already recorded as peerages on the Roll of the Peerage. It would appear then that not only is Lord McFall of Alcluith criminally liable for his conduct, he is also liable at civil law.

Parliamentary Privilege - Summary

184. To summarize with respect to Parliamentary privilege:

    a. It is the courts which decide whether Parliamentary privilege applies in any particular case.

    b. For Parliament to exercise jurisdiction where it cannot deal properly with an offence would be a breach of Article 6 of the European Convention on Human Rights (ECHR) and therefore unlawful. Note that Parliament cannot exempt itself from the Convention by declaring that it is not a court.

    c. Parliamentary privilege covers Parliamentary proceedings, which consist of formal acts done in a collective capacity. Members' correspondence does not form part of parliamentary proceedings.

    d. Parliamentary privilege only covers the proper and necessary business of Parliament, such as considering a petition. It is not the proper and necessary business of Parliament to obstruct the proper and necessary business of Parliament (particularly given that petitioning Parliament is a fundamental constitutional right).

    e. Parliament does not assert an exclusive jurisdiction to deal with criminal conduct, even where this relates to or interferes with proceedings in committee or in the House.

    f. The Committee for Privileges and Conduct accepts that criminal proceedings against Members, where these are considered appropriate, should take precedence over the House's own disciplinary proceedings, and this particularly includes serious crimes, such as those detailed above (an attempt to pervert the course of justice, misconduct in public office, and potentially fraud), where Parliament does not have adequate powers to deal properly with a case.

185. For these reasons, the ordinary criminal courts have jurisdiction in this matter. To put it the other way around, how can the court not take jurisdiction in this matter when Parliament itself has made it so clear, as explained above, that it should? Further, it is clear, for the reasons given above (a breach of Article 6 ECHR as a result of Parliament's inability to guarantee a fair trial), that it would be unlawful for Parliament to take jurisdiction in this matter and unlawful for a court to try to give it jurisdiction.

186. Further, this letter is addressed to the members of the Committee for Privileges and Conduct, excluding the Chairman, and contains allegations of criminal

conduct against the Chairman. It also explains how the members themselves will become criminally liable if they unlawfully obstruct my petition, either by action or inaction. If the court refuses to take jurisdiction on the grounds that the matter is subject to Parliamentary privilege, who would 'take jurisdiction'? It would be the Committee for Privileges and Conduct.

187. But the Committee for Privileges and Conduct would have to decline to take jurisdiction, because of the rule of natural justice which says that 'no man shall be a judge in his own cause', and 'hand back' jurisdiction to the court. In Pinochet, Re [1999] UKHL 52 (http://www.bailii.org/uk/cases/UKHL/1999/52.html), Lord Browne-Wilkinson quoted Lord Campbell in Dimes v. Proprietors of Grand Junction Canal (1852) 3 H.L. Cas. 759 (my emphasis):

'"No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest he had in this concern; but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest." (Emphasis added)'.

Conclusion

188. You might consider some of the following paragraphs to be inappropriate. Just think of them as a sort of victim statement designed to give you some idea of how I feel.

189. I claim to have the right to sit and vote in the House of Lords. Lord McFall of Alcluith has taken it upon himself to deny me proper consideration of that claim; he has denied me due process.

190. A person with the right to sit and vote in the House of Lords plays an important role in the government of the country, being a member of that 0.002% (2/1000ths of 1 percent), or thereabouts, of the population who make the laws we live by. If anyone who has the right to sit and vote in the House of Lords is prevented from exercising that right, then if follows that Parliament is not properly constituted - and if a Parliament is not properly constituted then, it seems to me, it is not a Parliament. So, the effects of unlawfully denying a person their right to sit and vote in the House of Lords might be very serious.

191. In the case of a limited company, a shareholder who has been unlawfully excluded from a meeting of shareholders can apply to the court under s.994 Companies Act 2006 on the basis that the company's affairs have been conducted in a manner unfairly prejudicial to him (unfairly prejudicing the interests of only one person is sufficient grounds for an application to the court). It appears to me that once the fact of unfair prejudice has been established, the court would have to nullify the meeting of shareholders, even if only one shareholder was prejudiced, because the court cannot safely conclude that the shareholder's presence at the meeting would not have led to a different result. What if that one shareholder had important information to disclose? Even if that shareholder only wanted to put forward an argument at the meeting, is it not possible that the argument might have swung the vote of the shareholders in another direction? Since the court cannot rule that it (the argument) couldn't have done so (only the shareholders can know that), it must assume that it could have done so - and nullify the meeting of shareholders accordingly. How would you feel if a court said to you: 'Oh well, it doesn't

matter that you were excluded from the shareholders' meeting because nothing that you could have said would have made any difference.' The fact is that a court has no right to make such a determination because it puts the court in the place of the shareholders; it usurps their role.

192. If a meeting of shareholders must be nullified where one shareholder has been excluded, is it not even more important the same should apply in the case of a Parliament where one member has been excluded, given that the matters dealt with in a Parliament will or could have far greater consequences than any meeting of shareholders? Why should Parliament be exempt from a law which it rightly imposes on others?

193. In Mereworth v. Ministry of Justice [2011] EWHC 1589 (Ch) (http://www.bailii.org/ew/cases/EWHC/Ch/2011/1589.html) at 14, reference is made to a case where the House of Lords refused to proceed to business until a writ of summons was issued to a certain peer. The House did this on the basis that it was not 'properly constituted'. This makes it quite clear that the House of Lords considers that if one peer is prevented from sitting and voting in the House then the House is not properly constituted, and it cannot proceed to business. Logically, if the House does proceed to business when not properly constituted, anything it does must be invalid, because if acts of the House are valid even if the House is not properly constituted, why refuse to proceed to business in the absence of one member? Note that the House of Lords itself has said that it is not properly constituted if one member is prevented from sitting and voting in the House. So, what happens when Lord McFall prevents the House from being properly constituted (when he prevents a person who should be allowed to sit and vote from doing so)? Does it not follow that all acts of the House are invalid? How can it be otherwise?

194. This gives rise to a question, as follows: *'Given that Acts of Parliament start with the words 'Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows…', if, in relation to a certain Act, the 'Lords Spiritual and Temporal' were not 'in this present Parliament assembled' because one or more of them were unlawfully excluded, and they could not therefore give their advice and consent, and the Act was not passed with their authority, can that Act possibly be valid?'*

195. If all the members of the House of Lords were to be unlawfully excluded, the answer would be clear. It would be 'No'. How could it be otherwise? So, what if 100 members were to be unlawfully excluded? It must be the same answer, because we cannot be certain that the result of the debate and vote would have been the same had they not been excluded (It is not just the vote that matters, contributions to the debate can also be critical). The same logic applies if 10 members are excluded. Can we safely exclude the possibility that the outcome might have been different? Clearly not. The same logic also applies if one member is excluded. Is it not true that one man can swing a debate, either by his vote or by the persuasiveness of his arguments? So, how can we safely exclude the possibility that the outcome might have been different? Is it not well-known that one man, acting or speaking at the critical moment, has often changed the course of history - preserved a nation, or led to victory in war, or saved thousands of lives, or ensured the security and happiness of millions?

196. So, how does Lord McFall of Alcluith know that I am not a new Pitt the Younger or a new Churchill, who might have changed the course of history for the better (even if in just a small way) had he been able to take his seat in the House of Lords? After all, I have proved, as a whistle-blower who, in an attempt to do the right thing, sacrificed his career, his marriage, his family, his house, his health (heart attack; arthritis, caused, I believe, by living in a house with damp 6 feet up the walls; psoriasis, caused, I believe, by stress; depression, caused by seeing my country sinking in a cesspit of corruption), his income and his pension (my income is £300/month), that I have both integrity and moral courage. Had I been admitted to the House of Lords when I acquired the Barony of Mordington in 1998, perhaps I could have achieved something in the area of financial regulation before the banking crisis of 2007/8 - to make up for what Lord McFall of Alcluith failed to do in that period. Can you doubt that, unlike him, I would have tried? It's a thought.

197. If my case is so clearly hopeless that even a person with no knowledge whatsoever of peerage law (Lord McFall of Alcluith) can see that fact, then, surely, the simple thing is to go through the proper procedure and explain to me in clear terms what the fatal flaws in my case are (partly for the benefit of future applicants). When someone tries to prevent a person from even advancing his arguments, that is, in my view, pretty much conclusive proof of the merit of those arguments. The fact that absolutely no-one has tried to counter my arguments with anything other than mere unsupported assertions or outright lies (my petition gives numerous examples) makes me even more sure of the strength of my arguments. In short, if there are valid arguments against my case, where are they?

198. It is clear to me that any person of integrity, particularly the holder of a relevant public office, such as that held by Lord McFall of Alcluith, who becomes aware that there are people recorded as peers on the Roll of the Peerage who are not peers (one of whom, the Countess of Mar, sits in the House of Lords and thus participates in the legislative process*), being mere feudal barons, and including the Prince of Wales, would take immediate steps to rectify the situation. But Lord McFall of Alcluith has done precisely nothing. Why is that?

    *The Earldom of Mar peerage was recognised by statute (Earldom of Mar Restitution Act 1885), but if it was not already a peerage then Parliament did not make it one by that statute; the recognition would have been ineffective because the Act only recognised an existing peerage. The Act recognised *'the honours, dignities, and titles of peerage anciently belonging to or enjoyed and held with the territorial earldom of Mar…'*, so, if there was no title of peerage *'anciently belonging to or enjoyed and held with the territorial earldom of Mar'* then nothing was restored (*'Complete Peerage'*, 2nd Ed., Vol. IX, p. 164). *'Complete Peerage'*, 2nd Ed., Vol. IX, p. 167, states: *'Investigation into the preamble of the said Bill by the Select Committee of each House proved, to the satisfaction of Parliament, that this ancient Peerage was already, by the laws of Scotland, entailed on Lord Mar'*. This is comparable to an Act which recognises as a peer someone who doesn't exist. Such an Act must be ineffective because the subject of the Act does not exist. The *'Complete Peerage'* (2nd Ed., Vol. IX, Appendix J, p. 169) says: *'in law and in fact, neither can a resolution of the House of Lords, nor can an Act of Parliament, nor can even the Crown call into existence or create a Peerage of Scotland.'* This must be because when a person is created a peer, he is created a peer of the realm and after the Treaty of

Union, 'the realm' was Great Britain and then the United Kingdom, so, to have a peer of the realm who is only a peer of Scotland is an impossible contradiction.

199. It was said in Viscountess Rhondda's claim [1922] 2 AC 339 (my emphasis): *'On the other hand, when a party has obtruded himself upon the House in which he has no right to sit, the remedy is equally plain. It is your duty to direct your Officers to refuse to administer the oaths, or allow the party to take his seat?'* Lord McFall of Alcluith therefore has a clear duty to seek to rectify the situation.

200. The Barony of Mordington is almost 800 years old. It is older than the oldest Scottish peerage (the Earldom of Sutherland, which dates from about 1235 - the Earldom of Mar is older than that but the current peerage dates from 1404) and older than the oldest English peerage (the Barony of de Ros, which dates from 1265); it is older than the Duchy of Cornwall (1337) and the Duchy of Lancaster (1399). It is legally indestructible. It used to be the case that feudal baronies could only be abolished by an Act of Parliament, but even this is no longer the case under international human rights law (European, EU and UN - that's thrice over), which provides that the abrogation of rights must be necessary and proportionate. And if my title is, as Lord McFall of Alcluith claims in effect, a mere bauble, what good reason is there for taking it away from me? Take away my bauble on the basis that it is unearned and unnecessary for my sustenance, and you must do the same to everyone else. This leads to a situation where the state allows enough for what it considers are people's basic needs but no more; this is called communism.

201. If my title is a peerage (and it is a peerage) then you cannot make it otherwise. You might be able to prevent public recognition of my peerage, for the moment, but you cannot unmake the peerage. This means that long after we are all gone, my title will still be there, whoever holds it. Perhaps, at that time, the Barony of Mordington will be recognised as a peerage by people who actually believe in the rule of law; people like the 1st Earl of Mansfield who said in 1770: *'Fiat justicia, ruat caelum'* (*'Let justice be done though the heavens fall'*), as opposed to the sort of people who say: *'Let justice be done when I feel like it.'* One must be optimistic.

'Time's glory is to calm contending kings,
To unmask falsehood and bring truth to light,
To stamp the seal of time in aged things,
To wake the morn and sentinel the night,
To wrong the wronger till he render right,
To ruinate proud buildings with thy hours
And smear with dust their glittering golden towers;'

'The Rape of Lucrece' (lines 939-945) by William Shakespeare.

202. Gordon Jackson QC, Vice-Dean of the Faculty of Advocates, wrote in *'The Scotsman'* on 11/1/2016 (my emphasis):

'There is, however, something else [other than 'maintaining law and order'] *which is of equal, if not more, importance in a free and democratic country and that is the maintenance of the rule of law itself. That is a big subject but the basic concept is really quite simple. On the one hand no individual or group, no matter how rich and powerful, is above the law, and on the other no citizen, no matter how unpopular, should be condemned* [or have their rights determined] *except in strict accordance with clearly defined and understood laws and*

procedures. In other words, no-one is to be guilty and punished [or granted or denied their rights] *unless and until the law clearly establishes it.* […] *Ultimately, it is about what we value. If we fail to properly support and value those who defend the interests of the unpopular and unlovely we cannot claim to truly believe in the rule of law.'*

203. *'In strict accordance with clearly defined and understood laws and procedures.'* Show me the written rule which gives Lord McFall of Alcluith authority to dismiss (determine) my peerage claim and I will happily drop this whole business.

204. The extent of the criminality I have faced is quite astonishing. Every person involved in my petition for the recognition of my barony, my subsequent peerage claim and the related proceedings, certainly on the 'official side', has been criminally dishonest, with the single honourable exception of Robin Blair, Lord Lyon from 2001 to 2008, who evidently felt compelled to accept my arguments about the barony in the face of the contrary opinions of the world's two leading experts in feudal baronies (Hugh Peskett and Sir Crispin Agnew of Lochnaw QC, who had their own motives for doing what they did - but they were no match for me). This includes Hugh Peskett, Emeritus Editor-in-Chief of Burke's Peerage, who wrote the original opinion on whether I owned a barony; Sir Crispin Agnew of Lochnaw QC, Rothesay Herald, who wrote further opinions on whether I owned a barony; Roy Shearer, a solicitor with Lindsays WS in Edinburgh, who engaged Sir Crispin Agnew of Lochnaw QC; Elizabeth Roads, Lyon Clerk and Keeper of the Records; Dr. Joseph Morrow, Lord Lyon from 2014; Grant Bavister, Ian Denyer and Ceri King of the Crown Office, Richard Heaton, Clerk of the Crown in Chancery; Ed Ollard, Clerk of the Parliaments; Lord McFall of Alcluith, Chairman of the Committee for Privileges and Conduct; Lord Fowler, the Lord Speaker; Lucy Scott-Moncrieff, House of Lords Commissioner for Standards.

205. And this is just the beginning, believe me. The corruption extends deep into the judicial system. As an example (one among many), Lindsays WS (Edinburgh solicitors) sued me in the Edinburgh Sheriff Court for their fees, claiming in writing on the summons (claim form) that the Edinburgh Sheriff Court had jurisdiction (*'The pursuers seek payment of the sums due which are to be paid at their place of business in Edinburgh. This Court accordingly has jurisdiction.'*). This is based on para. 2(b) Schedule 8 Civil Jurisdiction and Judgments Act 1982, so Lindsays could not claim to be unaware of that Act. This was untrue (a false representation) because under para. 3(4) Schedule 8 Civil Jurisdiction and Judgments Act 1982 (https://www.legislation.gov.uk/ukpga/1982/27/schedule/8/paragraph/3), I should have been sued in England, where I was living. Thus, they obtained my presence in court (brought me within the jurisdiction) by means of fraud (this is so even if their false representation was just made recklessly), which made the entire proceedings void for fraud*. Yet the Edinburgh Sheriff Court continued, quite illegally, to hear the case even after being advised of this fact (and thus the court became party to the fraud). This corruption continued in the English court system (Canterbury County Court, High Court (Queen's Bench Division) and High Court (Chancery Division)) when Lindsays bankrupted me in 2014, though they didn't get a penny for their efforts. This is because the English courts refused to allow me to raise the issue of fraud despite clear and binding authority to the effect that I was entitled to do so (bearing in mind that Scotland

is a foreign jurisdiction as far as the English courts are concerned). They also became party to the fraud. In Bussoleno Ltd v. Kelly & Ors [2011] IEHC 220, for example, it was said at 38:

'Halsbury's 'Laws of England' 4th Ed. Vol. 8 (3) (Reissue/4 at 151) contains a succinct summary of the current law:

"151. Judgment obtained by fraud.

A foreign judgment which has been obtained by fraud will not be recognised or enforced in England. The judgment is impeachable whether the fraud was on the part of the court or on the part of the successful party. It is immaterial that the fraud has already been investigated by the foreign court, although in such a case the plea of fraud may involve a retrial in England of the matters adjudicated upon by the foreign court; and it is immaterial that the unsuccessful party in the foreign proceedings refrained from raising the plea of fraud in those proceedings although the facts were known to him at all material times. If, however, the allegation of fraud has been made in fresh proceedings before the foreign court by way of an application to have the judgment set aside, the English court may hold the applicant to be estopped from challenging the judgment of the court which he elected to seise, or may find it to be an abuse of the process of the court for the allegation of fraud to be relitigated in England."'

In Adcock (Edward) v Archibald [1925] ScotHC HCJ_1 Lord Justice-General (Clyde) said: *'It is, however, a mistake to suppose that to the commission of a fraud it is necessary to prove an actual gain by the accused, or an actual loss on the part of the person alleged to be defrauded. Any definite practical result achieved by the fraud is enough.'*

In Derry v Peek [1889] UKHL 1 it was said: *'Fraud is proved when it is shown that a false representation has been made (1) knowingly or (2) without belief in its truth or (3) recklessly, careless whether it is true or not.'*

I quoted the law to them, including a House of Lords (now Supreme Court) decision binding on them (Owens Bank Ltd. v. Bracco [1992] 2 A.C. 443), until I was blue in the face, but it made no difference whatsoever. So, that is outright criminality in the Edinburgh Sheriff Court, the Canterbury County Court, the Chancery Division of the High Court in London and the Queen's Bench Division of the High Court in London. These are judges we are talking about.

*Lazarus Estates Ltd v Beasley [1956] 1 QB 702, 712 (my emphasis): *"No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever…"*

In John Howard Shook V. Betty Lou Lindsey Shook Hopkins (Supreme Court of Mississippi No. 95-Ca-01122-Sct), quoting McClellan v. Rowell, 232 Miss. 561, 99 So. 2d 653 (1958): *'"It is well established as general rule that in a civil case a court will not take jurisdiction based on a service of process on a defendant who was brought within the reach of its process wrongfully or fraudulently, or by deceit or any other improper device, provided of course the wronger deceit is chargeable to the plaintiff." This rule is based not only lack of jurisdiction but on the view that it is improper for a court to exercise a jurisdiction so obtained.'* English courts regularly cite US cases.

For an English case see R v. Horseferry Road Magistrates Court, ex p. Bennett (No. 1) [1993] UKHL 10 (http://www.bailii.org/uk/cases/UKHL/1993/10.html) where Lord Bridge of Harwich said (my emphasis): *'There is, I think, no principle more basic to any proper system of law than the maintenance of the rule of law itself. When it is shown that the law enforcement agency responsible for bringing a prosecution has only been enabled to do so by participating in violations of international law and of the laws of another state in order to secure the presence of the accused within the territorial jurisdiction of the court, I think that respect for the rule of law demands that the court take cognisance of that circumstance. To hold that the court may turn a blind eye to executive lawlessness beyond the frontiers of its own jurisdiction is, to my mind, an insular and unacceptable view.'*

It is quite clear that if a criminal court cannot acquire jurisdiction as a result of a law enforcement agency participating in an unlawful act, even if the act was done outside the jurisdiction by some other person or body, a civil court cannot acquire jurisdiction as a result of an unlawful act by one of the parties within the jurisdiction (Lindsays WS is based in Scotland), and certainly not by fraud. This is a House of Lords decision which is binding on all English and Scottish courts.

206. Why did all these people act in this way? The answer is simple - because they know they will get away with it. In other words, they believe that the judicial system (where matters are bound to end up if I do not obtain redress elsewhere) is as corrupt as they are and will side with them (in the case of the courts referred to above, they don't just believe that the judicial system is corrupt; they know it for a certain fact). They believe this with sufficient certainty to allow them to do something which, if they are wrong, will cost them their careers, their reputations and put them behind bars potentially for a very long time. They know they are right about this.

207. This means that the political system is totally corrupt, the judicial system is totally corrupt and, as I know from my experience in the banking sector, the banking system is totally corrupt (not including most of the ordinary staff of course). Pretty much a full house I would say (excluding the military of course, but then ordinary soldiers despise politicians). How many bankers are behind bars as a result of the banking crisis? That's right - not one. Rather proves my point, doesn't it? They knew they would get away with it as well. In the Sunday Telegraph on 21/10/2018, an editorial (*'Britain is in danger of losing control'*) said: *'The state of the nation was well-summarised by Tory MP Johnny Mercer. To paraphrase him, everything is broken.'* The situation is serious.

208. This is all rather funny in a depressing kind of way. When those awful hereditary peers were running things in the 19th century, we were the most powerful country in the world, the mother of parliamentary democracy and the fountain of the rule of law. We were admired by almost everyone and feared by those who did not admire us. Now, not so much; Britain has turned into a banana republic, a 'corrupt third-world sh**hole', as the saying goes. Should I thank you for doing this? For taking the greatest country in the world and trashing it in less than 100 years? How can you not be responsible for this given your lifetime in politics and/or public office? It's an achievement of sorts I suppose. Well done.

209. The external trappings are still there (the pomp, the ceremony, the grand old buildings, the funny titles, the silly uniforms) but the inside has rotted away, like the husk of an Egyptian mummy empty but for a handful of dust. We are left

with a skeleton with a hideous grinning skull staring at nothing out of nothing - and you will prove it by ignoring this letter.

210. My title and coat of arms would be similarly meaningless, but for one thing - I have abided by my oath and paid the price (as explained above):

    'I shall fortify and defend the true Christian Religion, and Christ's holy evangel, now presently preached within this realm to the utmost of my power.

    I shall be loyal and true to my Sovereign Lord the King's Majesty, to all orders of chivalry, and to the notable Office of Arms.

    I shall fortify and defend justice at my power, and that without favour or fead.

    I shall never flee from my Sovereign Lord the King's Majesty, nor from his highness's lieutenants in time of mellay or battle.

    I shall defend my native realm from all alieners and strangers.

    I shall defend the just action and quarrel of all ladies of honour, of all true and friendless widows, of orphans, and of maidens of good fame.

    I shall do diligence wheresoever I hear there are any murderers, traitors, and masterful reavers, that oppress the King's lieges, and poor people, to bring them to the law at my power.

    I shall maintain and uphold the noble estate of chivalry, with horse, harness, and other knightly abuliments, and shall help and succour them of the same order at my power, if they have need.

    I shall enquire and seek to have the knowledge and understanding of all these articles and points contained in the book of chivalry

    All these I promise to observe, keep, and fulfil, I oblesse me. So help me, my God, by my own hand. So help me God.'

211. Do you believe in the rule of law? I hate to say it, but my experience to date (see above) tells me that the answer is probably 'No'. Please prove me wrong.

212. I look forward to hearing from you. If you have any queries, please do not hesitate to contact me.

Yours sincerely,

Graham Senior-Milne

Appendix - Jurisdiction and procedure, including the handling of my petition

Introduction

1. Jurisdiction and procedure in peerage claims are not entirely straightforward matters (a least, not to a beginner like me). Different sources say slightly different things as described below, but it seems to me that some of these differences are intended to cover different situations, such as immediate succession to an acknowledged peerage on the death of the holder as compared to a disputed claim to a peerage or a claim to a long dormant peerage or one not previously known to exist at all.

Role of the Sovereign

2. The Sovereign is the sole fount of honour (with exceptions, but he/she is always the ultimate source, as I show in my petition). Logically, this means that, while the Sovereign can delegate consideration of a peerage claim to some other person or body, that person or body does not actually make the final decision (determine the claim). He/she or it makes a recommendation (expresses an opinion) to the Sovereign, who then makes the final decision. Halsbury ('*The Laws of England*', Butterworth & Co., London, 1909, Vol. 6, p. 485) says: *'Apart from the franchises presently to be mentioned* [which includes counties palatine] *which are granted out of the prerogative, the general rule at common law is that the King may not grant to another the prerogatives of the Crown.'*

3. I use the word 'Sovereign' rather than 'Crown' to indicate that I am referring to the person of the Sovereign rather than the wider concept of 'the Crown', which refers to the office embodied in the Sovereign and includes officials exercising delegated powers on the Sovereign's behalf. The power to grant certain honours, such as knighthoods and membership of other orders, can be delegated (and has been delegated to the Governor-Generals of Australia and Canada, for instance), but I believe that the power to create or recognise a peer of the realm cannot be delegated, except perhaps during a regency.

4. The distinction between the Sovereign and the Crown is important because I believe that peerage claims should be addressed to and received by the Sovereign <u>in person</u>, who then <u>personally</u> delegates consideration of the claim to whoever he or she considers appropriate. This might not be the House of Lords and peerage claims have been referred in the past, but not the recent past, to the Privy Council (Judicial Committee of) and the High Court of Chivalry (the Lord High Constable, when that office was occupied, and the Earl Marshal).

5. With regard to addressing a petition to the Sovereign in person, the report on the Ampthill Peerage Case [1977] 1 AC 547 states (my emphasis): *'By a petition dated July 30, 1973, and an amended petition dated April 30, 1975, <u>presented to Her Majesty</u>, John Hugo Trenchard Russell prayed that Her Majesty might be graciously pleased to admit and allow his claim to succeed to the title of his father as Baron Ampthill of Ampthill in the county of Bedford and that he might receive a writ of summons to Parliament by that title.'* This clearly states that the petition was presented to Her Majesty in person, unless plain English words do not mean what they say.

6. In Baronetcy of Pringle of Stichill, Re [2016] UKPC 16, it was said at 1 (my emphasis): *'In this reference under section 4 of the Judicial Committee Act 1833,*

Her Majesty requires the Board to advise as to (i) who is now entitled to be entered on the Official Roll of the Baronetage as the Baronet of Pringle of Stichill and (ii) whether the evidence resulting from the obtaining of a DNA sample from Sir Steuart Robert Pringle in late 2009 or early 2010 should be admitted in order to determine the first question.' This clearly states that Her Majesty personally referred the matter to the Judicial Committee, in which case the petition must have been presented to her personally. s.4 Judicial Committee Act 1833 says (my emphasis): *'It shall be lawful for His Majesty to refer to the said Judicial Committee for hearing or consideration any such other matters whatsoever as His Majesty shall think fit; and such Committee shall thereupon hear or consider the same, and shall advise His Majesty thereon in manner aforesaid.'* This clearly states that the Sovereign (it refers to no-one else) can refer a matter to the Judicial Committee, which reinforces my initial comment to the effect that the petition must have been presented to Her Majesty personally. What applies to a baronetcy claim must surely also apply to a peerage claim.

7. In certain straightforward cases, such as the immediate succession to a currently acknowledged peerage (one on the Roll of the Peerage) by a son on the death of his father, the process seems to have been delegated to the Lord Chancellor/Secretary of State for Justice (see below re the Royal Warrant of 2004), so the monarch is not involved. In my view, these cases are not really 'peerage claims' at all; they are administrative processes similar in all the essentials to issuing any official document which requires the applicant to prove his identity and immediate family relationships. This is because there is no question of the existence or nature of the peerage, it is merely a question of proving succession to the peerage by production of evidence such as birth, marriage and death certificates; that is of proving simple, commonplace and uncontested facts.

Jurisdiction of the House of Lords

8. Even though the monarch is the sole fount of honour, the House of Lords decides who can sit and vote in the House of Lords (or rather, has decided that it decides who can sit and vote in the House of Lords). In other words, the House of Lords can refuse to allow a person to take his seat in the House of Lords even though that person has been granted a peerage and issued with a writ of summons.

9. This happened in the Wensleydale Peerage Case of 1856 when the House of Lords refused to allow Sir James Parke, who had been created a life peer by Queen Victoria, to take his seat in the House because the House of Lords took the view that the monarch had no power (at that time) to create a life peer. He was eventually granted a hereditary peerage.

10. Similarly, the House of Lords could refuse to proceed to business until it is properly constituted; that is, until a person who it considers to be a peer has been issued with a writ of summons and allowed to take his seat. This could happen where the Sovereign/Crown refuses to issue a writ of summons.

11. In this context, in a letter dated 22/10/2010, the Head of the Crown Office confirmed that if the Crown refuses to issue a writ of summons, the correct procedure is to petition the House of Lords (see Mereworth v. Ministry of Justice [2011] EWHC 1589 (Ch) at 3, http://www.bailii.org/ew/cases/EWHC/Ch/2011/1589.html).

12. I believe that this is why Halsbury ('*The Laws of England*', Butterworth & Co., London, 1909, Vol. 22, p. 277) says: *'The jurisdiction of the House of Lords is confined to claims to the right to sit and vote there.'* In other words, the House of Lords actually determines (makes the final decision concerning) that issue, whereas in other issues (for instance, whether a peerage claim has been successfully made out) it merely makes a recommendation to the Sovereign; it expresses an opinion.

The Crown Office

13. The guidance notes issued by the Crown Office and referred to by the Lord Lyon (https://www.courtofthelordlyon.scot/index_htm_files/peerage.pdf) and the College of Arms in their official guidance notes are:

    a. *Guidance Notes on Succession to a Peerage where no Right to Stand for Election in Lords' By-elections is Sought* (http://www.college-of-arms.gov.uk/GuidanceNotes2.pdf, accessed 6/11/2018). This covers claims to succession to a peerage where the claimant does not want to be entered onto the Register of Hereditary Peers who wish to be eligible to stand for election to the House of Lords as one of the 92 hereditary peers allowed to sit and vote in the House of Lords under the House of Lords Act 1999. This register is maintained by the Clerk of the Parliaments.

    b. *Guidance Notes on Succession to a Peerage with Entry onto the Register of Hereditary Peers* (http://www.college-of-arms.gov.uk/GuidanceNotes1.pdf, accessed 6/11/2018). This covers claims to succession to a peerage where the claimant wants to be entered onto the Register of Hereditary Peers who wish to be eligible to stand for election to the House of Lords as one of the 92 hereditary peers allowed to sit and vote in the House of Lords under the House of Lords Act 1999.

14. The procedure where no entry onto the Register of Hereditary Peers is sought is that an application, together with a statutory declaration by a near relative attesting to the relationship of the applicant to the deceased peer, and the relevant evidence (typically birth, marriage and death certificates), is submitted to the Registrar of the Peerage, who works within the Crown Office. The guidance notes say nothing about the procedure following submission of an application beyond *'we will aim to notify the new Peer that their name has been placed on the Roll within three months of acceptable evidence.'*

15. The procedure where entry onto the Register of Hereditary Peers is sought is essentially the same as outlined in the standing Orders of the House of Lords (11 of 23/1/2001, https://www.parliament.uk/business/publications/house-of-lords-publications/rules-and-guides-for-business/the-standing-orders-of-the-house-of-lords-relating-to-public-business/). The claimant lodges the statutory declaration and supporting evidence as described in the previous paragraph, but also submits a petition (addressed to the House of Lords presumably) to the Clerk of the Parliaments, who refers it to the Lord Chancellor. If the Lord Chancellor is satisfied that the claim is made out, he reports to the House accordingly and the claimant is advised in writing. Neither the Guidance Notes nor the Standing Orders explain what happens next, but it would seem that the claimant will be placed on the Roll of the Peerage and on the Register of Hereditary Peers and issued with a writ of summons; in other words, it would

appear that the matter is not referred to the Sovereign. The Guidance Notes state that (my emphasis): *'In the event that the Lord Chancellor is not satisfied that the claim has been made out he will refer the matter to the Committee for Privileges for adjudication.'* The use of the word 'will' indicates that there does not appear to be a discretion not to refer the matter to the Committee for Privileges.

The Royal Warrant of 2004 establishing the Roll of the Peerage

16. The Royal Warrant of 1/6/2004 (https://www.thegazette.co.uk/notice/L-57314-889) setting up the Roll of the Peerage provides that the Roll will be maintained by 'Our Secretary of State', which means, I suppose, the Lord Chancellor, who is also Secretary of State for Justice.

17. As far as the procedure for applications to be entered on the Roll is concerned, the Warrant says that applications should be made to the Secretary of State *'in such form and supported by such evidence as Our Secretary may from time to time direct.'* Presumably, this refers to the procedures outlined in the guidance notes issued by the Crown Office. The Warrant goes on to say that, having considered the application, the Secretary of State shall either cause the applicant to be entered on the Roll, if he is satisfied that the applicant is a peer, or refuse the application if he is not so satisfied, *'whether he is of the opinion that a claim to a Peerage by petition to Us should be brought or otherwise.'* Clearly then, the Secretary of State can recommend that the applicant should petition the Sovereign. It goes on *'Nothing in this Our Warrant affects claims to Peerages by petition to us.'* Note the distinction between an application and a petition.

18. The Royal Warrant therefore provides for petitions to be made to the Sovereign, either without having first applied to the Secretary of State or after the Secretary of State has refused an application. Such petitions clearly must involve a different procedure from the one described in the Warrant (see above). There is no point in having a process involving a petition to the Sovereign if this simply ends up using the same procedure as an application to the Secretary of State. What is this procedure?

'Atkin's Encyclopaedia of Court Forms in Civil Proceedings'

19. *'Atkin's Encyclopaedia of Court Forms in Civil Proceedings'*, (2nd Ed., 1998, Vol. 31, p. 173 *et seq.*), which the Crown Office referred me to, distinguishes between:

    a. Claims to a peerage by right (where a person claims to have succeeded to, or to have become otherwise entitled to, a peerage).

    b. Petitions to the Sovereign to exercise his/her discretion to terminate an abeyance (where a barony is suspended between co-heirs following the death of the holder of a barony by writ leaving only daughters) in favour of one of the co-heirs. Note that a barony by writ which has resolved itself into a single heir, by the extinction of all but one of the lines of descent from the daughters of the last baron by writ, is no longer in abeyance because that single heir becomes entitled to the barony. The petitioner then becomes a claimant by right.

20. In the case of a claim by right, an initial application for a writ of summons must be made to the Lord Chancellor (which, in essence, is the process described

above for applying for entry on the Roll of the Peerage). If the application is refused, then a petition should be submitted to the Crown through the Home Office, which refers it to the Attorney-General (in the case of Scottish peerages, through the Scottish Office, which refers it to the Lord Advocate), who will (not 'may') require the petitioner to appear before him with written and oral evidence to establish a *prima facie* case, and who then will draft a report. Once the report of the Attorney-General/Lord Advocate has been obtained *'the Crown then refers the petition, accompanied by the Report of the Attorney-General or Lord Advocate to the House of Lords and the House refers it to the Committee for Privileges'* (p. 195, para. 4). Note that Atkin's does not say that this process 'can' or 'may' take place; there is no suggestion that this process is optional. However, it must be open to the Sovereign to grant the petition without reference to the House of Lords. It must also be open to the Sovereign to deny the petition without reference to the House of Lords, but this would not, in my view, be a wise or just to do such a thing, mainly because it is arguably a denial of justice (fair process) not to have a petition considered by the House of Lords and Committee for Privileges, which always includes holders of high judicial office.

21. When it says that a petition should be submitted to the Crown, I think this must mean that the petition should be addressed to the Sovereign personally, as I have argued above. In the Ampthill Peerage Case [1977] 1 AC 547 it says (my emphasis): *'The petitioner Geoffrey Denis Erskine Russell therefore humbly prayed that Her Majesty might be graciously pleased to declare that he was entitled to the Barony of Ampthill and to direct a writ of summons to be issued to him for attendance in Parliament as Baron Ampthill of Ampthill. The Solicitor-General was directed to report on the petitions of both petitioners. Her Majesty was afterwards pleased to refer the petitions, together with the Solicitor-General's report thereon, to the House of Peers, and on December 3, 1975, the House resolved that it be referred to the Committee for Privileges to consider and report thereon. On February 23, 24, 25 and 26 the petitions came on for hearing before the Committee.'* Atkin's pro-forma petition (p. 187) is addressed: *'To the Queen's Most Excellent Majesty'*.

22. In the case of a peerage in abeyance (suspension) between co-heirs (where the holder of a barony by writ died leaving only daughters), a petition is submitted to the Crown asking the Crown (1) to declare the petitioner a co-heir and (2) to terminate the abeyance in favour of the petitioner. The Crown refers the petition to the Attorney-General (never the Lord Advocate because baronies by writ are unknown to Scottish law), who will (not 'may') require the petitioner to appear before him with written and oral evidence to establish a *prima facie* case, and who then will draft a report. The options are:

    a. If there are no issues of law or pedigree, the Attorney-General will usually recommend that the Sovereign exercise his/her discretion to terminate the abeyance in favour of one of the co-heirs, or not as the case may be, without referring the matter to the House of Lords.

    b. If there are any issues of law or pedigree, the Attorney-General must recommend that the petition should be referred to the House of Lords, because it is for the House, not the Attorney-General/Lord Advocate to decide on such issues.

Halsbury's *'The Laws of England'* (1909)

23. Halsbury ('*The Laws of England*', Butterworth & Co., London, 1909, Vol. 9, p. 20) says that a petition is made to the Crown (i.e. the Sovereign), who then refers it to the House of Lords, which refers it to the Committee for Privileges; though the Crown can act on a report by the Attorney-General without referring the petition to the House of Lords. This is broadly what I have outlined above.

24. Halsbury (*'The Laws of England*', Butterworth & Co., London, 1909, Vol. 9, p. 21) says that, since the time of Charles II, if there is any doubt about a petition then it has always been referred to the House of Lords (which refers it to the Committee for Privileges).

25. Halsbury ('*The Laws of England*', Butterworth & Co., London, 1909, Vol. 22, p. 278) says that a petition is made to the Sovereign, who sends it to the Home Secretary who refers it to the 'law officers of the Crown' (I assume that this means the Attorney-General). The law officers can recommend that a writ should be issued but normally recommend referral to the House of Lords, which refers it to the Committee for Privileges.

Debrett's

26. Debrett's (https://www.debretts.com/expertise/essential-guide-to-the-peerage/claims-to-peerage/, accessed 28/10/2018), which is a respected but not official source, says (my emphasis):

    'When a hereditary peer dies, and his heir wishes to prove his claim to the title, he or she must provide suitable documentary evidence to the Crown Office of the House of Lords to prove that he or she is indeed the heir to the title.

    When the House of Lords Act of 1999 removed the automatic right of hereditary peers of England, Scotland, Great Britain and the United Kingdom to receive a summons to take their seats in the House of Lords, it also led to the discontinuation of the Roll of the Lords Spiritual and Temporal. This meant that there was no official register in which those inheriting hereditary peerages could seek inclusion as evidence of their status and rank.

    This situation was resolved by a Royal Warrant dated 1 June 2004 which instituted a Roll of the Peerage, to be prepared and kept by the Lord Chancellor, acting in consultation with Garter Principal King of Arms (for English peerages) and Lord Lyon King of Arms (for Scottish peerages). The Roll of the Peerage also records peers of Ireland and life peers.

    Any person claiming a peerage may apply to the Lord Chancellor to be entered on the Roll; the application and supporting evidence is presented under the direction of the Lord Chancellor. The Registrar of the Roll of the Peerage is Ian Denyer, who is also Head of the Crown Office at the House of Lords.

    Claims to abeyant peerages, or to peerages whose succession is in dispute, are made by Petition to The Crown, presented through the Lord Chancellor. He refers the accompanying documents to the Attorney General in order that he may report upon them to the Sovereign.

    The Attorney General seeks the advice of Counsel for The Crown in peerage matters and then hears the petitioner and his counsel. Claims to peerages in abeyance will not be proceeded with if the commencement of the abeyance occurred more than 100 years before the presentation of the petition or if the

petitioner (not being a child of the last holder of the peerage or a descendant of a parent of the last holder) represents less than one-third of the dignity.

If the Attorney-General is satisfied (a) that no improper arrangement has been entered into between the co-heirs, and (b) that no question of law or pedigree is at issue, he may recommend the exercise of the royal discretion without reference to the House of Lords.

Otherwise he is obliged to recommend a reference to the House of Lords, which in turn refers the matter to the Committee for Privileges. In the case of Scottish peerages or other peerages with a strong Scottish connection, such claims are referred through the Scottish authorities to Lord Lyon King of Arms.'

27. The above adds to the previous sources cited in that it says that the Attorney-General seeks the advice of Counsel for the Crown; this is not a permanent office as such, just a capacity in which a barrister acts in relation to a certain case or matter.

28. Note that it says that the Attorney-General is <u>obliged</u> to recommend referral to the House of Lords if he does not recommend exercising the 'royal discretion'.

29. The statement that claims relating to Scottish peerages are referred to the Lord Lyon is not correct, for the reasons explained in the main body of my letter (above). Atkin's says that such claims are referred to the Lord Advocate, which makes sense because he is the Scottish equivalent of the Attorney-General. Clearly, the Attorney-General is not competent to report on matters of Scottish peerage law.

30. The statement that the Roll of the Peerage is *'kept by the Lord Chancellor, acting in consultation with Garter Principal King of Arms (for English peerages) and Lord Lyon King of Arms (for Scottish peerages)'* is not correct. The Royal Warrant says: *'Our Secretary of State shall prepare the Roll in consultation with Our Garter Principal King of Arms and our Lord Lyon King of Arms, according to their respective heraldic jurisdictions.'* It says 'prepare', not 'keep'. The previous paragraph says that *'The Roll is to be prepared and kept by Our Secretary of State'*, so there is a difference between preparing and keeping. 'Preparing' clearly means 'setting up'; 'keeping' means maintaining the Roll after it has been set up. In other words, the Royal Warrant gave the Lord Lyon a role in setting up the Roll, but not in keeping the Roll.

<u>Hansard (Government response re Scottish peerage claims 2003)</u>

31. Scottish Peerage Claims: Ministerial Responsibility, HL Deb 17 July 2003 vol 651 c174WA says:

'Lord Hughes of Woodside asked Her Majesty's Government:

Which Minister now has responsibility for the handling of pre-Union Scottish Peerage claims. [HL4078]

Lord Evans of Temple Guiting

These functions have been exercised by the Secretary of State for Scotland since being transferred from the Home Secretary in 1977. The Secretary of State for Constitutional Affairs and Lord Chancellor is now responsible for matters relating to hereditary peerages, and it has therefore been agreed that the non-statutory functions in relation to claims to disputed or dormant pre-Union peerages of

Scotland currently held by the Secretary of State for Scotland will transfer to the Lord Chancellor with immediate effect.

The functions include receipt of petitions to the sovereign about claims to uncertain or disputed peerages of Scotland, and petitions for regrant, and reference of such petitions to the appropriate Law Officers for advice.

The role of the Advocate-General for Scotland as the appropriate Law Officer remains unchanged.'

Summary of process

32. To sum up in relation to a claim by right (as opposed to a petition to terminate an abeyance by an exercise of the royal discretion).

    a. An application is initially made to the Lord Chancellor/Secretary of State for Justice via the Crown Office. The application takes the form of a statutory declaration by a person who knows the applicant (usually a relative) stating the essential facts of the application (how the peerage vests in the applicant, such as because he is the eldest legitimate son of the deceased peer), accompanied by relevant evidence such as birth, wedding and death certificates.

    b. A statutory declaration and evidence of the type described above will not always be appropriate. In my case, for instance, I have already been officially recognised as the holder of the title in respect of which I am claiming to be a peer, so I don't have to prove a descent from or a relationship to anyone; the question is simply whether the title I already hold is a peerage. This is a question of law.

    c. Where the applicant wants to be placed on the Register of Hereditary Peers who wish to be eligible to stand for by-election to the House of Lords in any vote of hereditary peers, he must also petition the House of Lords via the Clerk of the Parliaments, who refers the petition to the Lord Chancellor. This petition is presumably addressed to the House of Lords since the process does not appear to involve the Sovereign. Consideration of the petition will not be proceeded with until after a favourable conclusion has been reached concerning the statutory declaration and supporting evidence.

    d. In either case above (either (1) entry on the Roll of the Peerage is sought or (2) entry on the Roll of the Peerage and the Register of Hereditary Peers is sought), if the Lord Chancellor is satisfied then the applicant/petitioner will be placed on the Roll (and, where applicable, the Register) and a writ of summons will be issued.

    e. There is no indication that the application/petition is referred to the Attorney-General or Advocate General at this stage, but the Lord Chancellor can presumably obtain advice from anyone he likes, subject to any relevant restrictions. However, since the matters being proved at this stage will normally be simple matters of fact (birth, marriage, death), there will probably be no requirement for legal advice. However, where the Lord Chancellor does need legal advice, the question arises as to where he should obtain that advice. Given that petitions to the Crown are referred to the Attorney-General/Advocate General, why should the same petition routed to the Lord Chancellor be

referred to anyone else? There is no reason to do so; it's the same petition raising the same issues of law. If the Attorney-General/Advocate General is the appropriate person to give advice on a petition addressed to the Crown, those officers must be the appropriate people to give advice on the same petition routed to the Lord Chancellor. Further, the Advocate General is far more likely to know the right people to approach for advice in relation to an issue of Scottish law than the Crown Office, if he needs such advice (which is likely in relation to peerage law). Why would the Crown Office assume that it knows better than the Advocate General about where to obtain such advice? In my case, the Crown Office approached someone (the Lord Lyon) who is not an expert in peerage law - and it shows.

f. If the Lord Chancellor is not satisfied that the applicant has made out his claim, then he will advise the applicant accordingly. Where a petition has been submitted to the House of Lords, the Lord Chancellor will also advise the House that, in his view, the petitioner has not made out his claim. It is open to the Lord Chancellor to advise the applicant to proceed by way of petition to the Crown. Even if he does not do so it is open to the applicant to proceed in that way in any event, according to the Royal Warrant of 1/6/2004 (para. 5(6)).

g. So, a person can petition the Crown without having made an application to the Lord Chancellor in the manner described above or he can petition the Crown if such an application is refused. Atkin's says (p. 175) that *'It is only if the application to the Lord Chancellor for a writ is refused that a petition becomes necessary.'*

h. A petition to the Crown is made via the Lord Chancellor, according to Debrett's (but Halsbury says the Home Secretary and Atkin's says the Home Office) and should be addressed to the Sovereign. The Lord Chancellor will obtain the advice of the Attorney-General, in the case of an English peerage, or the Lord Advocate (now the Advocate General), in the case of a Scottish peerage.

i. The Attorney-General/Advocate General will consider the petition and then make his report to the Lord Chancellor, after hearing the petitioner by his counsel.

j. If the Attorney-General/Advocate General reports that, in his view, the claim is made out then the Lord Chancellor may advise the Sovereign to grant the petition without reference to the House of Lords, which advice the Sovereign may or may not accept as he/she sees fit.

k. If the claim is doubtful or contested then the Lord Chancellor will normally advise the Sovereign to refer the petition to the House of Lords, which will refer it to the Committee for Privileges. The Sovereign can decline to accept the advice of the Lord Chancellor and grant the petition without referring it to the House of Lords, or refuse the petition and decline to refer it to anyone, as happened in the Banbury Peerage Case of 1727 (*'Complete Peerage'*, 2nd Ed., Vol. I, p. 405), though this was done on advice in that case, or refer the petition to a body other than the House of Lords, such as the Judicial Committee of the Privy Council or the High Court of Chivalry. Atkin's says (p. 173) that in petitions to terminate an abeyance, if the Attorney-General *'is of the*

opinion that there may be grounds for doubting the propriety of any arrangement between the co-heirs, he must recommend a reference to the House, since it is for the House, and not the Attorney-General, to decide whether any impropriety exists in the agreement.' But, surely, this logic must apply in any peerage claim/petition, because it is not for the Attorney-General/Advocate General, an official, to decide (even in effect - where the Sovereign relies on his recommendation) on the merits of a claim/petition, as discussed below. It should be done by a tribunal, and, under Article 6 ECHR, an independent and impartial tribunal established by law.

l. If the Attorney-General/Advocate General reports against the claim (reports that, in his view, the claim has not been made out), then, according to Cruise (William Cruise, *'A Treatise on the Origin and Nature of Dignities or Titles of Honour'*, Joseph Butterworth & Son, London, 1823, p. 315), the petition will not be referred to the House of Lords. In such a case, the petitioner can then petition the House of Lords himself, asking it to assess whether he does, in fact, have the right to sit and vote in the House of Lords. If the House of Lords decides that the Crown has wrongly refused to issue a writ of summons to the petitioner, it can refuse to proceed to business until a writ of summons is issued and the House is properly constituted. Given that a person has a fundamental constitutional right to petition Parliament, if a person does so then Parliament (the House of Lords in this case) must consider that petition, and the House of Lords considers a petition by referring it to the Committee for Privileges. In other words, in relation to peerage claims, a right to petition Parliament means, in effect, a right to have a petition considered by the Committee for Privileges.

m. It appears to me that the Attorney-General/Advocate General can only report that, in his view, a claim has not been made out where the claim clearly has no basis in fact or law; is 'totally without merit' in legal parlance. If there is a *prima facie* case, or just what might turn out to be an arguable case (see below), then it appears to me that the matter should be argued before an independent and impartial tribunal; namely, the Committee for Privileges (if it can be deemed independent and impartial under Article 6 ECHR). I think it would be most unwise for the Attorney-General/Advocate General, who is an official and not a judge, to make what is, to all intents and purposes, a judicial determination of a claim unless it is crystal clear that the claim is without foundation. But even in such a case, I think the matter should, as a matter of correct procedure, be put before an independent and impartial tribunal, if only because where a claim is so clearly without foundation, it will be short and simple matter to dismiss it in a proper judicial fashion. In my view, the standard which should be used to assess whether a petition should be referred to the House of Lords is the same as that used in an application for permission to proceed with a judicial review; namely, where *'on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case'* (R v Inland Revenue Commissioners, ex p. National Federation of Self Employed and Small Businesses Ltd [1981] UKHL 2). This is a low threshold designed to weed out hopeless cases.

n. Halsbury (*'The Laws of England*', Butterworth & Co., London, 1909, Vol. 9, p. 21) says that, since the time of Charles II, if there is any doubt about a petition then it has always been referred to the House of Lords. It appears to me that where the Attorney-General/Advocate General reports that a claim has not been made out, unless he is 100% certain on this point, there is a chance that he is wrong. For instance, if the Attorney-General/Advocate General is 99% certain that a claim has not been made out, there is a 1% chance that it has. And if there is a 1% chance, then there is some doubt on the matter; one cannot say that there isn't any doubt, which is the only situation where Halsbury says, by implication, that a petition will not be referred to the House of Lords. In short, I cannot realistically foresee a situation where it would be appropriate not to refer a petition to the House of Lords, since there must always be some chance, however small, that the claim will be made out.

o. In addition to which, it cannot be appropriate for a non-judicial and partly political official (the legal adviser to the government) to make what is, in effect, a judicial determination (it must be a judicial determination because it determines a question concerning a legal right - a right to real property (the peerage) and a right to sit and vote in the House of Lords). Such a thing must be a breach of the Article 6 ECHR right to a fair trial because the Attorney-General cannot meet the requirement for 'an independent and impartial tribunal established by law'. This means that it is actually unlawful to allow the Attorney-General/Advocate General to determine a claim. In short, the claim has to be referred to 'an independent and impartial tribunal established by law', whatever body that might be (and we can't just assume that either the House of Lords or the Committee for Privileges meets the Article 6 ECHR requirements).

p. The Committee for Privileges, which, under the Standing Orders of the House, will include holders of high judicial office, will consider the petition; that is, it will hear counsel for the claimant and the Attorney-General in opposition for the Crown (his job is to guard the rights of the Crown and the peerage) and consider the evidence.

q. Having considered the petition the Committee for Privileges will report its opinion to the House of Lords, which then reports its opinion (which is not necessarily the same as that of the Committee for Privileges) to the Sovereign. Note that the House of Lords can ask the Committee for Privileges reconsider the matter, as happened with Viscountess Rhondda's peerage claim in 1922, and the Committee for Privileges might give a different opinion the second time round, as also happened with Viscountess Rhondda's peerage claim in 1922.

r. The Sovereign will usually accept the advice of the House of Lords, but, as stated, he/she is not bound to accept the advice of the House of Lords any more than he/she was bound to accept the advice of the Attorney-General/Advocate General at an earlier stage in the process. But when dealing with a question of legal rights, can a person simply be denied his legal rights by the mere exercise of a discretion? Can such a

thing be lawful under Article 6 of the European Convention on Human Rights? I doubt it.

s. A refusal at any stage to grant the petition does not prevent the petitioner from later renewing his petition or some other person from making a claim in respect of the same title or a different title challenging the relevant principles of law. See William Cruise, *'A Treatise on the Origin and Nature of Dignities or Titles of Honour'*, Joseph Butterworth & Son, London, 1823, p. 305 *et seq.* in this respect.

The processing of my petition

33. The first point to note is that I acquired the Barony of Mordington in 1998 and it is now 2018, so it has taken 20 years to reach the current position. I submitted my petition to the Crown Office on 14/6/2016 and it is now November 2018, well over 2 years later. This cannot be considered reasonable in any circumstances.

34. How did the processing of my petition compare to the procedure outlined above?

35. The application stage (application for a writ of summons to the Lord Chancellor with a statutory declaration and supporting evidence) did not apply in my case because I was already acknowledged as the holder of the relevant title; the only question is whether that title is a peerage. This is a question of law.

36. In June 2016 I submitted my petition to the Crown Office, addressing it to the House of Lords, on the assumption, as far as I can remember, that the petition would eventually be referred to the House of Lords. However, it appears that a petition should be addressed to the Sovereign, who will then normally refer it to the House of Lords. It is only if the Crown (Sovereign) refuses to issues a writ of summons that a petition should be submitted to (and addressed to) the House of Lords. In any event, what I did does not seem to have mattered because when I raised this issue with the Crown Office and offered to amend my petition to address it to the Sovereign, I was told not to bother (see my letter of 18/1/2018 and Ceri King's reply of 30/1/2018 below). I have a residual concern that this fact might be used to justify not progressing my petition, as in 'Well, technically, you did not submit a petition to the Crown at all, so we did not process it as a petition to the Crown.'

37. My petition was not referred to the Advocate General as it should have been, but to the Lord Lyon, whose one page 'opinion' of March 2017, consisting entirely of factual errors and unsupported assertions, was used to reject my petition. I was told by Richard Heaton, Clerk of the Crown in Chancery that the Lord Lyon's advice had been sought because this is the procedure specified in the Royal Warrant of June 2004 setting up the Roll of the Peerage. But the Royal Warrant does no such thing; the Lord Lyon was given a role in setting up the Roll, but not in keeping it. But the fact that the Lord Lyon was approached proves that they acknowledged that they did need to obtain legal advice (they couldn't just reject my petition out of hand). So, given that the Lord Lyon was not the correct person to approach, who was? Well, how about the person who is actually responsible for advising the government on Scottish legal issues - the Advocate General. This means that they should have approached the Advocate General in the very first place and not have waited until the Lord Chancellor rejected my petition. Why did the Crown Office obtain advice from the Lord

Lyon? Because they knew from previous correspondence (see appendix) what the advice would be (that a feudal barony is not a peerage), and they wanted a bit of paper which they could use to dismiss my claim. They got it.

38. In October 2017 I received a letter from Ed Ollard, Clerk of the Parliaments, rejecting my petition, even though he was not involved in the process at all, since I had not applied to be entered on the Register of Hereditary Peers which he maintains (see above). Following this, I submitted my petition (addressed to the House of Lords) to Lord McFall of Alcluith, Chairman of the Committee for Privileges, who refused to do anything with my petition (based on the Lord Lyon's 'opinion' I believe).

39. In December 2017, I received a letter from Richard Heaton, Clerk of the Crown in Chancery, telling me that the Lord Chancellor had rejected my petition (based on the Lord Lyon's opinion I believe),

40. In January 2018, we appeared to start the process which applies when an application has been rejected and a petition is submitted to the Crown. But it then took the Crown Office about 8 months to identify that the Advocate General is the person responsible for reporting on such petitions; something which they should have known already, and which I believe they did know, given that the Crown Office itself referred me to Atkin's (see above), that Atkin's (at least the 1998 edition I managed to obtain) points to the Lord Advocate and that it is common knowledge that the Advocate General took over the role of advising the government on Scottish legal issues from the Lord Advocate some years ago.

41. And that is where things stand as at November 2018.

42. So we have:

    a. June 2016 - A petition which was not referred to the Advocate General as it should have been. In other words, there was no proper legal opinion on my petition, merely an informal one-page 'opinion' from the Lord Lyon consisting entirely of factual errors and unsupported assertions. It was utterly worthless as an opinion but was, nonetheless, a piece of paper (something, anything) which could be used to reject my petition.

    b. October 2017 - A rejection of my petition by someone who should not have been involved in the process at all (Ed Ollard, Clerk of the Parliaments), based on the Lord Lyon's one-page 'opinion', I believe.

    c. December 2017 - A rejection of my petition by the Lord Chancellor, but not based on a proper legal opinion from the Advocate General, merely the one-page 'opinion' of the Lord Lyon, obtained on the basis that this was the required procedure under the Royal Warrant of 1/6/2004, but there is no such procedure laid down in the Royal Warrant.

    d. August 2018 (over 2 years after submitting my petition) - An eventual referral (They say, but I'll believe it when I see it) to the person whose opinion should have asked for at the very beginning (the Advocate General), but from whom I have heard nothing as yet (at November 2018).

    e. Note that if the Lord Lyon's opinion was sufficient to allow my claim to be properly considered, then no referral to the Advocate General would

have been made ('We refuse to refer the matter to the Advocate General because we already have a perfectly sufficient legal opinion from the Lord Lyon.'); which means that the fact that my petition was referred to the Advocate General proves that the Lord Lyon's 'opinion' was inadequate.

1998-2000

43. Shortly after buying Edrington House, the former manor place of Nether Mordington, with my wife in May 1998, I asked a formidable historian and genealogist (Dr. John Robertson of Anstruther, Fife) to research the history of the house, which is Georgian in style but is clearly based on an older tower house (essentially a small castle - the walls are 6ft thick in places). One of the charters he noted in his report was recorded as follows in the Register of the Great Seal (*Registrum Magni Sigilli* or RMS for short) dated 13/9/1636 (RMS, IV, 245) (my emphasis), which summarizes charters under the Great Seal: *'At Edinburgh. The King granted to Mr Thomas Ramsay, minister at the kirk of Foulden, & to Helen Kellie his spouse, the town & lands of Nethar Mordingtoun, with the manor & mill sometime built upon them by the said Thomas, in the shire of Berwick, which lands, with the right of regality thereof, William earl of Mortoun, lord Dalkeith & Abirdour (from whom the said Thomas held them) & Robert lord Dalkeith, his eldest son, had resigned, & which the king had dissolved from the lordship & regality of Dalkeith. To be held, with right of regality, by the said Thomas & Helen in conjunct fee, & their heirs, irredeemably. Rendering one penny in name of blench ferm.'*

44. The words 'with right of regality' sparked my interest because they indicated that Thomas Ramsay was granted some royal right or privilege. What was it and did it still exist? Could I wear a crown? Have an army? Hang trespassers and litterbugs? Set up a road toll? Kidnap fair maidens? These were important questions.

2001

45. In August 2001 I wrote to Lyon Office to ask if they knew what the words 'with right of regality' meant and if they indicated the existence of a barony.

46. In a letter to me dated 8/8/2001, Mrs. Elizabeth Roads, Lyon Clerk and Keeper of the Records told me that the Court of the Lord Lyon is 'not concerned with establishing whether lands are a barony or not'. This is untrue of course and this is proved by, amongst other things, the interlocutor (court order) of the Court of the Lord Lyon of 11/11/2004 recognising me as Baron of Mordington.

47. So, Mrs. Roads lied from the very beginning.

48. In October 2001, I engaged Mr. Hugh Peskett, who is probably the world's leading expert in feudal baronies, and possibly in peerage matters as well (later becoming editor of Burke's Peerage), to establish whether there was a barony attached to my house (Edrington House).

2002

49. In his report of 12/3/2002, Hugh Peskett identified that Edrington House (the manor house and lands of Nether Mordington) had once been part of the Barony of Mordington, but he said that it had been dissolved from that barony in 1636 and that the barony itself appears to have been extinguished in that period in some way, not being mentioned in a charter of the Regality of Dalkeith

in 1642. With regard to the 'right of regality' granted to Thomas Ramsay in 1636, he said that, in his view, this would have created an underlying barony if a grant *cum jure regalitatis* ('with right of regality') equated to a grant *in liberam regalitatem* ('in free regality'); the words generally used to create a regality.

50. Hugh Peskett made a number of 'errors', although it took me some time to realize this (until mid-2004 in fact):

    a. The original charter did include the words *in libera regalitate*; several times, including in the critical *tenendas* clause, which defines the terms on which the land will be held. He missed this because he only looked at the summary of the charter in the Register of the Great Seal, rather than the full wording of the original charter.

    b. The Barony of Mordington had been erected into a regality on its own in 1381/2; it was not part of a larger regality at that time, although it was, as a barony held in regality, incorporated into the Regality of Dalkeith in 1540. This meant that there was no creation of a new regality in 1636, merely the transfer of an existing regality; one created in 1381/2.

    c. When the Earl of Morton granted Over Mordington (the other half of the barony) to Sir James Douglas in 1634, he did not retain the superiority of the lands, as Hugh Peskett said. This was obvious even from the summary of the charter in the Register of the Great Seal. The earl resigned the lands into the hands of the King for regrant to Sir James Douglas, which meant that those lands were dissolved from the barony at that time. This meant that after 1634 the lands of Nether Mordington (the remaining half of the barony) comprised the entire barony, so that when those lands were granted to Thomas Ramsay in 1636, the barony (held in regality) passed *sub silentio* to him; that is, without express mention. This is in accordance with the doctrine that if the entire lands of a barony are disposed of, the barony passes to the grantee, even if the barony is not mentioned in the relevant charter/disposition.

    d. Being creations of the Crown, Scottish feudal baronies are legally indestructible, except by an Act of Parliament, so the barony must have continued to exist after 1636 and must have been owned by someone; either Sir James Douglas or Thomas Ramsay. It had to be one or the other.

51. These 'errors' were not accidental. Hugh Peskett quite clearly tried to sabotage my attempt to identify whether I owned a barony. I know why but that is not relevant here.

52. By a petition to the Lord Lyon dated 26/5/2002 I applied for a grant of arms and recognition as Baron of Nether Mordington, on the basis that Thomas Ramsay had been granted right of regality in 1636, that baronial jurisdiction (that is, a barony) had been retained after the abolition of regalities by the Heritable Jurisdictions Act 1747, and that this barony had passed to my wife and myself when we purchased Edrington House, the old manor place of Nether Mordington, being the *caput* (legal head or place where the barony courts were held) of the barony, in 1998.

53. The initial reaction of the Lord Lyon was not encouraging, and I recall a meeting I had with the Lord Lyon around this time when he said that I could not be the owner of a barony because none of the relevant charters/dispositions contain a grant of lands *in liberam baroniam* ('in free barony'); the words normally used to erect a barony.

2003-2004

54. In August 2003 I obtained an opinion from Professor Robert Rennie of the Glasgow University School of Law; an expert in property law. In essence, his view was that, on the assumption that the charter of 1636 did create a barony, that barony would have passed to the owners of Edrington House in 1963, and thus to my wife and myself in 1998, rather than to the owners of the lands of Edrington (Nether Mordington), the Robertson sisters of Cawderstanes, when the house was split from the greater part of the lands in that year (essentially, the Robertson sisters retained the farmland but sold off the house, with its grounds, stables, lodge, paddocks, stream and woodlands). This is mainly because Edrington House is the *caput* of the barony and the *caput* and the barony are impartible (indivisible in law).

55. Between October 2003 and May 2004, I obtained draft submissions (arguments which could be submitted to the Lyon Court in support of a petition to be recognised as a baron), a formal opinion and a second opinion (expanding on the first opinion) from Sir Crispin Agnew of Lochnaw QC, Rothesay Herald, leading counsel in this area of law. Contrary to my instructions, he only considered the question of whether a regality had been created in 1636 and whether a barony had arisen out of the residual baronial jurisdiction left to lords of regality when regalities were abolished by the Heritable Jurisdictions Act 1747, which was passed after the 1745 Jacobite Rebellion in order to destroy the power of the Highland chiefs (on the basis that if the chiefs had virtually no power over their clansmen, the bond between the chiefs and their clansmen would be undermined).

56. Sir Crispin Agnew of Lochnaw came to the conclusion that there was no barony arising in 1747 out of a regality created in 1636, because no regality had been created in 1636. I examine his reasoning in detail at the end of my petition (mainly because I think alternative viewpoints have to be disclosed, even if only to explain why they are wrong), so I will not do so again here.

57. Nonetheless, two points must be borne in mind. Firstly, that Sir Crispin Agnew of Lochnaw made serious 'errors' of fact in his reports (so serious they invalidated his entire opinion) and that he refused to correct them when notified of them. Secondly, that I had, by the time of his second opinion, identified the fact (and notified him accordingly) that the Earl of Morton had not continued to be the feudal superior of the lands of Over Mordington after he had granted those lands to Sir James Douglas in 1634, that this meant that, after 1634, the Barony of Mordington consisted solely of the lands of Nether Mordington, that this meant that when the Earl of Morton granted the lands of Nether Mordington to Thomas Ramsay in 1636, the Barony of Mordington must have passed *sub silentio* (without express mention) to Thomas Ramsay, and that, as Thomas Ramsay's successor in title to the Barony, as confirmed by Professor Robert Rennie, I was the Baron of Mordington (as opposed to Baron of Nether Mordington). Of course, this was what the Court of the Lord Lyon

later confirmed in my grant of arms with baronial additaments in 2007, but Sir Crispin couldn't see it apparently and refused to modify his nonsensical opinion.

58. In the latter half of 2004 I approached the Lord Lyon with this new evidence (or rather, new interpretation of the existing evidence) and asked him if I could amend my petition so that I would no longer seek to be recognised as Baron of Nether Mordington (created in 1636), but would instead seek to be recognised as Baron of Mordington (created in the early 1200s). At this stage, I had not fully woken up to the fact that the Barony of Mordington had been erected on its own into a regality in 1381/2, so I did not petition to be recognised as a Lord of Regality. In any event, even if I suspected that Mordington was a regality, which I did, it seemed likely to me that the Lord Lyon would simply refuse to recognise a regality, given that a regality was described as a 'royal title' by Lord Bankton. I thought that would be a step too far for the Lord Lyon.

59. The Lord Lyon accepted my arguments, not just because they were plainly correct (the only possible interpretation of the evidence - to come to a different conclusion you had to cook the evidence and the law, which is what Hugh Peskett and Sir Crispin Agnew of Lochnaw did of course) but also, at least partly I think, because he was impressed that I was prepared to submit weighty evidence, including Crown charters, which appeared to contradict my case and explain why it didn't. In other words, I showed that I was honest and not trying to conceal anything.

60. By an interlocutor (court order) dated 11/11/2004 the Lord Lyon recognised me as Baron of Mordington. This was shortly before the abolition of the feudal system in Scotland on 28/11/2004 when feudal baronies ceased to be attached to land and became incorporeal (that is, intangible) heritable property. Since no-one was sure what the effect of the abolition of the feudal system would be on the whole area of feudal baronies, the Lord Lyon tried to process all petitions for arms with baronial additaments 'in the queue' before the 'appointed day' of 28/11/2004.

<u>2005-2007</u>

61. The next thing in the process was the grant of arms, but I left this until 2007 for various reasons (expense being one of them). In any event, I finally obtained the grant of arms with baronial additaments in October 2007.

<u>2008-2009</u>

62. All this time I continued my research into Scottish feudal baronies and regalities and peerage law. As part of this process, on 12/8/2009 I wrote to Ian Denyer of the Crown Office and Registrar of the Roll of the Peerage to ask him whether the Earldom of Sutherland was on the Roll as a feudal title, and if it was, whether other feudal earldoms and baronies should be on the Roll as well.

63. In an E-Mail dated 13/8/2009, Ian Denyer replied: *'I confirm that the Sutherland title is included on the Roll of the Peerage. The title is included on the Roll on the basis that the present Countess of Sutherland held a Writ of Summons to Parliament prior to the passing of the House of Lords Act 1999.'*

64. As I say in my petition (para. 8): *'This assertion, which was also made by Mrs. Elizabeth Roads, Lyon Clerk and Keeper of the Records, in an E-Mail to me dated 1/7/2016, was an attempt to persuade me that the Earldom was not included on the Roll as a feudal barony but as a barony by writ. This assertion is nonsense.*

The entry on the Roll for Sutherland says: 'Hereditary Countess in the Peerage of Scotland'. Since there have been no peerages of Scotland created since 1707 and since there have never been any 'baronies by writ' in Scotland, where the concept of baronies by writ is unknown to law, a peerage of Scotland must date from before 1707 and cannot be a barony by writ. Further, in the case of Sutherland, the title can only be a feudal barony because there has never been a grant of a personal title of that name (Earl of Sutherland) by letters patent.'

65. So, in his very first E-Mail to me, Ian Denyer tried to lead me up the garden path, as Mrs. Roads also tried to do later.

66. We continued with a verbal fencing match for some time, with me being terribly polite (I wanted to corner him into giving an opinion) and Ian Denyer being blunt and dismissive (he knew that if we continued a proper conversation he would be trapped), but without providing satisfactory answers to my question. In short, he could not/would not explain why, if the Earldom of Sutherland is a peerage, other feudal earldoms are not also peerages.

2014-2015

67. On 20/12/2014 I notified Ian Denyer of my intention to apply to be entered on the Roll of the Peerage and to be issued with a writ of summons. I attached a petition, which was an earlier version of my current petition.

68. On 12/1/2015 Grant Bavister, Assistant Head of the Crown Office, replied (my emphasis):

    'I have been in touch with colleagues at the Court of The Lord Lyon who inform me that your Matriculation of Arms did not include the additament for a Peerage Coronet and that you were recognised as the feudal Baron of Mordington by virtue of your ownership of the lands. On this basis you are not a Peer of Scotland and are not able to take advantage of the relevant part of Article 23 of the Union with Scotland Act 1706; accordingly you are not in a position to make an application to be entered on the Roll of the Peerage, nor does it therefore convey the right to stand for election to a vacant seat amongst the 92 remaining hereditary Peers in the House under the terms of the House of Lords Act 1999. I cannot see that Article 20 is of an aide to you as that appears to me to preserve the rights that would have run with the holder of the feudal Barony of Mordington.'

69. So, at an early stage he adopted the position that I could not even apply to be entered on the Roll of the Peerage. Naturally, the Royal Warrant establishing the Roll says no such thing. Any person can apply to be entered on the Roll and, if a person does so, he is entitled to due process; that is, to have his petition considered in the normal way. The Lord Lyon has no jurisdiction to rule in peerage matters because the House of Lords has exclusive jurisdiction in such matters, and Grant Bavister, who claims to be an expert in peerage law, should be aware of such a basic fact. And if he doesn't claim to be an expert, why did he pontificate on the subject in the first place? It is not for him or the Lord Lyon to try to prevent me from even making an application.

70. In an E-Mail to Grant Bavister of the same day (12/1/2015) I pointed this out and said that all I required from him was advice on the process, nothing more.

71. On 12/1/2015 Grant Bavister replied (my emphasis):

    'Dear Mr Senior-Milne,

The process for applying to have your name placed on the Roll of the Peerage is set out in the attached Royal Warrant and guidance notes for formulating a straightforward claim; I also attach a standard form of Petition to the House of Lords; I think it unlikely that the Committee for Privileges will deal with a Petition submitted direct to them if the process of proving a claim has not been gone through first and failed, i.e. a claim to the Lord Chancellor who has either refused it or declined to make a decision upon it. I refer you to Atkin's Court Forms (I only have the 1987 ed here), vol 31 (1987 issue), pp.193 and following, which sets out the practice and various forms that may be utilised; where there are references to the Home Office or Scottish Office, you should read "Lord Chancellor"; there is probably a later edition, but I have not seen it.

Yours sincerely,

Grant Bavister'

2016

72. On 14/6/2016 I submitted a petition to be entered on the Roll of the Peerage to Ian Denyer. That's more than two and a half years ago now.

73. On 30/6/2016 Grant Bavister wrote to me:

'Dear Mr Senior-Milne,

Thank you for your email of the 14th June claiming that your succession to the Barony of Mordington be recorded on the Roll of the Peerage.

You mention in your email [of 14/6/2016] *that the Barony of Mordington is a feudal Barony; the practice in relation to English feudal Baronies is that they are not recorded on the Roll of the Peerage, but as Scottish practice sometimes differs from that south of the Border I have sought advice on your Petition from my colleagues in the Court of the Lord Lyon. Lyon Clerk informs me that the Barony of Mordington is indeed a feudal Barony and as such it should not be recorded on the Roll of the Peerage notwithstanding your right to hold the title has been established as evidenced in the Matriculation of Arms. The reason we do not and have never entertained succession claims to feudal titles is because dignities which can be bought and sold, as in the present case, are not akin to personal Peerages, which latter are granted by the Crown and are inalienable.*

I hope we can dispose of this matter on this informal basis, but if you still wish to pursue your Petition then I must inform you that my advice to the Lord Chancellor upon it will be on the same grounds and that he will be invited to refuse it or decline to consider it.

With best wishes,

Grant Bavister'

74. On 30/6/2016 I replied to Grant Bavister as follows (my emphasis):

'Dear Mr. Bavister,

Thank you for your E-Mail. You say that 'Lyon Clerk informs me that the Barony of Mordington is indeed a feudal Barony and as such it should not be recorded on the Roll of the Peerage...' This cannot be correct. As I stated in my original E-Mail, there are at least three Scottish feudal baronies recorded in the Roll of the Peerage at this moment; the Barony of Torphichen, the Earldom of Sutherland and the Dukedom of Rothesay. I refer to other Scottish feudal baronies

recognized as peerages in the papers I submitted with my petition (03_Mordington.pdf).

You also say 'The reason we do not and have never entertained succession claims to feudal titles is because dignities which can be bought and sold, as in the present case, are not akin to personal Peerages, which latter are granted by the Crown and are inalienable.' This is also not correct. All Scottish peerages (pre-1707) can be resigned into the hands of the monarch for regrant to a new series of heirs. In a memorandum by the then Lord Advocate, the senior law officer of the Crown in Scotland, which appeared at Appendix 12 of a Report of a Joint Committee on House of Lords Reform in 1962 he observed (and in relation to the right of Scottish peers to resign their honours to the King for re-grant to a new series of heirs): 'On the whole I am of the opinion that the pre-Union procedure [i.e. law] has never been abrogated and is still legally competent' (Sir Malcolm Innes of Edingight, Lord Lyon 1981-2001, 'Peers and Heirs', Scottish Genealogist, Sept. 1995, p. 99). There is nothing to prevent the holder of a Scottish peerage from doing this for a consideration. In other words, all Scottish peerages are alienable and can be bought and sold.

I would also point out that the definition of 'Peer' given in the original warrant establishing the roll of the peerage on 11/6/2004 makes no mention of a limitation to inalienable titles. If it had done so then, for the reason explained above, all Scottish peerages would have been excluded from the roll.

I have submitted my petition and ask that it be processed in the proper manner. My petition is addressed to the Committee for Privileges and the proper procedure is to lay my petition before the Committee. I would remind you of the statement in Mereworth v Ministry of Justice [2011] EWHC 1589 (Ch) (http://www.bailii.org/ew/cases/EWHC/Ch/2011/1589.html) at 12:

'What applies to the House of Commons applies equally to the House of Lords. This is illustrated by Viscountess Rhondda's claim [1922] 2 AC 339 where the House of Lords' Committee for Privileges considered the claim of Viscountess Rhondda to sit in the House of Lords. Her claim was based on the Sex Disqualification (Removal) Act 1919. Lord Birkenhead, the Lord Chancellor, said that it was the duty of the Committee to report into the question whether Viscountess Rhondda was entitled to receive a Writ of Summons. As he put it:

"The writ is not to be issued capriciously or withheld capriciously at the pleasure of the Sovereign or of this House. It is to be issued, or withheld, according to the law relating to the matter, and if, under that law, it appears that there is a debt of justice to the petitioner in that matter, the writ will issue and, if not, it cannot issue."

Thus, the decision in that case about whether the law required a writ to be issued was a matter for the Committee for Privileges to decide.'

Can I also point out that the guidance notes issued by the Ministry of Justice (http://www.college-of-arms.gov.uk/GuidanceNotes1.pdf) state: 'In the event that the Lord Chancellor is not satisfied that the claim has been made out he ***will*** *refer the matter to the Committee for Privileges for adjudication.' The Lord Chancellor cannot therefore reject my claim. If he is not satisfied that the claim is made out then he must refer it to the Committee for Privileges. A failure to refer a claim to the Committee in such circumstances would be subject to an application for a judicial review (seeking a writ of mandamus).*

I ask that your advice to the Lord Chancellor includes this E-Mail.

Yours sincerely,

Graham Senior-Milne'

75. On the same day I wrote further:

'Dear Mr. Bavister,

Further to my E-Mail below, I note that you raise the possibility that the Lord Chancellor might decline to even consider my petition. In this context I would refer you to the warrant of 1/6/2004 establishing the roll, which states: 'After an applicant has taken such steps as may be required of him under paragraph (3), Our Secretary of State SHALL consider the application.' (My emphasis). It is clear, on this basis, that the Lord Chancellor cannot refuse to consider an applicatioin at all. The word 'shall' imposes a mandatory requirement.

Paragraph 6 makes it clear in that in the event of a refusal by the Lord Chancellor following consideration, a party can petition the monarch, which petition would then be referred to the Committee for Privileges.

I ask that your advice to the Lord Chancellor includes this E-Mail.

Yours sincerely,

Graham Senior-Milne'

76. Clearly, we were now arguing about procedure. It was clear to me that they would try to use procedure hurdles to prevent my petition being considered at all. I was pointing out to them that their own procedures required the Lord Chancellor to consider my petition and, if he refused it, to refer it to the Committee for Privileges.

77. Our correspondence continued over the next few months, mainly on matters of procedure. In particular, I queried why Ian Denyer and Grant Bavister were considering my petition when the Royal Warrant establishing the Roll of the Peerage says that the Secretary of State 'shall' consider applications and that there was no mention in the Royal Warrant of any right to delegate that role. In other words, it appeared to me that there is a mandatory procedure which requires the Secretary of State to consider applications personally. After all, if there is a clear, positive statement that a person 'shall' do a thing, do not such words mean what they say in plain English? In addition, I queried whether Ian Denyer and Grant Bavister had sufficient knowledge of Scottish peerage law to consider my petition, even if they had the authority to do so under the Carltona Principle (which I do not accept - see Director of Public Prosecutions v Haw [2007] EWHC 1931 (Admin), http://www.bailii.org/ew/cases/EWHC/Admin/2007/1931.html and Audit Commission for England & Wales v Ealing London Borough Council [2005] EWCA Civ 556 (http://www.bailii.org/ew/cases/EWCA/Civ/2005/556.html at 15), given that the case law makes it clear that even if delegation is allowed, it can only be to an official who is competent to do the job. Not to do this is Wednesbury unreasonable and thus unlawful.

78. In October 2016 I received automatic E-Mail confirmations to the effect that both Ian Denyer and Grant Bavister had left their jobs. I then established contact with Ceri King, Head of Secretariat & Deputy Clerk of the Privy Council,

Deputy Clerk of the Crown in Chancery, Head of the Crown Office and Registrar of the Peerage.

79. Grant Bavister then started to work for the Garter King of Arms and was assigned to help people with peerage claims. Since he was no longer a civil servant, he could not give official advice as such. In the next few months. I sent him a new petition on 18/2/2017, with an effective lodgement date of 24/2/2017, which he sent to the Lord Lyon on 27/3/2017 it seems.

2017

80. On 23/3/2017 I wrote to Grant Bavister by E-Mail as follows:

'Dear Mr. Bavister,

Have you received a reply from Cheri King to confirm the date on which my petition will be treated as having been formally submitted to the Crown Office, as per my E-Mail below? Also, I understand that since it is the monarch who decides peerage claims, petitions should be addressed to the monarch, who then refers it to the House of Lords, who then refer it to the Committee for Privileges, who then report back to the House of Lords, who then make a recommendation to the monarch, who then makes a decision. So I seem to have missed out a step in the process. Logically, a petitioner cannot petition the House of Lords if a petition needs to be referred by the monarch to the House of Lords. Do you have a firm rule on this issue?

Yours sincerely,

Graham Senior-Milne'

81. On 24/3/2017 Grant Bavister wrote to me by E-Mail as follows:

'Dear Mr Senior-Milne,

Thank you for your email.

I did not hear back from Mrs King about the effective date of lodgement of your Petition, but that may be because as I had put forward a date to you, she like me thought there was nothing more to be said; if you are happy to accept the 24th Feb, as I mentioned in my reply of 26th Feb, then I have no doubt she will be content with that, as it is the date I received it.

As regards the second part of your email, your statement of the procedure re. reference of a claim to the Committee for Privileges ("C for P") is broadly correct. Prior to the House of Lords Act 1999 what you state as the procedure would have been what happened, although in fact the Crown may obtain the advice of the Law Officers before deciding whether to refer a Petition to the C for P. So far as I am aware prior to 1999 no Petition to the House in aide of a claim to a Peerage was necessary - a formal claim was made and considered by the Crown Office, who advised the Lord Chancellor ("LC"), if the claim was made out the LC simply endorsed the claim that a Writ of Summons should be issued. However, since 1999 matters are a little less clear - there has, so far as I am aware been no reference of a disputed claim to the C for P since about 1992/93 (Moynihan). Therefore, assuming your claim received a positive Report from Lord Lyon, I took the view before I left the Service that the way forward was for you to simply Petition the House for the relief you are now seeking; if the report was positive the LC would Report accordingly to the House and in the normal course of events the Petition and the LC's Report upon being submitted to the House it would

probably be accepted without comment - this is following the standard procedure since 1999. If however, Lord Lyon's Report advises against accepting your claim - which is in effect a claim for the right to stand in Peers' by-elections and if elected, receive a Writ of Summons - then following the last case from the early 1990s the LC would most likely be advised to make no determination and the decision notified by letter; that however may not be the case this time as you need to Petition the House for the relief sought in the prayer to your Petition, so the LC may well have to formally Report to the House that she declines to advise the House. If that were to be what happens it is likely that the modus operandi at that point will be as you state, to Petition the Crown and that will commence the procedure you set out to take the matter forward to the C for P. Whether LC is able to advise the House that your present Petition be referred to the Crown I do not know. No doubt my successors could find that out.

You will see I hope that my hands were tied by the necessity of obtaining Lord Lyon's Report before the LC can be advised what decision to come to - if the outcome were to be positive a Petition to the House would be essential to obtain the remedy sought in the prayer to your Petition and if the outcome was to be negative there likewise needed to be a formal, reasoned refusal with which to advise the LC.

Remember please that the above is my view as at the end of September when I left the Service. My remit now is inter alia to consider claims and advise claimants as necessary on the mechanics/evidence of their claims. I no longer have any remit to provide advice to the Crown Office and how they proceed when Lord Lyon's Report on your claim is received is a matter solely for them.

I am afraid your short email has elicited a somewhat longer reply, but I hope you understand why I felt it necessary that you should Petition the House in the first instance.

With best wishes,

Grant Bavister'

82. On 13/4/2017 Ceri King wrote to me:

'Dear Mr Senior-Milne,

As you may be aware, Grant Bavister forwarded your query of 31st March to me for response. You ask in what capacity Lord Lyon provides advice to the Lord Chancellor on Peerage claims.

The basis for this advice is set out, as you describe, in a Warrant under the Royal Sign Manual dated June 2004. Under the terms of this Warrant, the Secretary of State is obliged to prepare and keep a roll of the peerage of England, Scotland, Ireland, Great Britain, the United Kingdom of Great Britain and Ireland and the United Kingdom of Great Britain and Northern Ireland.

Paragraph 1(3) of the 2004 Warrant provides that the Secretary of State shall prepare the Roll of the Peerage in consultation with Garter Principal King of Arms and Lord Lyon King of Arms according to their respective jurisdictions. Paragraph 1(4) states that the Secretary of State "may take such steps and do such acts as [he] considers expedient to preparing and keeping the Roll". This includes seeking advice from either Garter Principal King of Arms and Lord Lyon King of Arms according to their respective jurisdictions.

It would be a nonsense to suggest that the Lord Chancellor may not take advice on new claims, once a Roll of the Peerage had been established.

I hope this clarifies the position.

Yours sincerely

Ceri King'

83. On 15/4/2017 I wrote to Ceri King by E-Mail as follows:

'Dear Ms. King,

Thank you for your E-Mail. You say that the Lord Chancellor can seek advice 'from either Garter Principal King of Arms and Lord Lyon King of Arms according to their respective jurisdictions' but, of course, my petition is a peerage claim and the Lord Lyon has no jurisdiction in peerage claims.

While you explain that the Lord Chancellor can seek advice from anyone he considers appropriate (but see above), you have not expressly confirmed the capacity in which the Lord Lyon is acting. But since he cannot be acting in either a ministerial or a judicial capacity, he can only be giving informal advice. I think the point here is that the Lord Lyon is not an expert in either feudal law, peerage law or constitutional law, which are the areas of law relevant to my petition. Since he is giving advice as an official to another official and not as a lawyer to his client, I take it that his advice is not covered by legal professional privilege. I think that if the Lord Lyon is acting as a lawyer advising a client, he would have to decline to give any advice on the basis that he doesn't have the necessary knowledge and expertise and is therefore bound by rules of professional conduct NOT to give advice. This may sound surprising but a Lord Lyon generally has no need to be an expert in feudal law, but only in the modern conveyancing steps needed to transfer a barony (he only really encounters feudal law in the context of baronies); he doesn't need to be an expert in peerage law because he has no jurisdiction in peerage claims and he has no need to be an expert in constitutional law because he hardly, if ever, is asked to consider constitutional issues. For these reasons can I ask, as an FOI request, for the Lord Lyon's advice to be disclosed to me. In this context, I note that the Wikipedia article on legal professional privilege (https://en.wikipedia.org/wiki/Legal_professional_privilege_in_England_and_Wales) says: 'It is necessary that the solicitor or barrister be consulted professionally and not in any other capacity.' It seems to me that the Lord Lyon is not being consulted in a professional capacity as a lawyer but as Lord Lyon.

Yours sincerely,

Graham Senior-Milne'

84. On 6/5/2017 I wrote to Grant Bavister by E-Mail as follows:

'Dear Mr. Bavister,

I have now received a copy of the Lord Lyon's 'report' dated 20/3/2017 [see attached]*, as an FOI request. Frankly, it is a disgrace and not worth the paper it is written on. He puts forward no legal arguments backed by authorities, he merely makes unsupported assertions. I have produced 65 pages of legal argument backed by numerous authorities; he has produced one page backed by nothing at all.*

Not only does he not put forward any legal arguments backed by authorities, but the single 'fact' he does refer to is (1) wrong and (2) irrelevant. With regard to ownership of the dominium utile (what he calls 'use of the land'), my wife and I owned the entire property; that is both the dominium directum (the superiority) and the dominium utile (the use of the land). It was clear to me that although we owned the property jointly, under feudal law a husband holds a barony owned by his wife jure uxoris ('in right of his wife'). If a husband holds an entire barony owned by his wife jure uxoris, then it is clear the same must apply when the wife owns a half share. However, I did not want to argue the point with the Lord Lyon (because of his obvious ignorance of the law), so the simple thing to do was for my wife to transfer her share of the superiority to me. We did this on the advice of Senior Counsel because a barony could subsist as a superiority only, which meant that it was unnecessary for my wife to transfer her share of the dominium utile to me. The Lord Lyon seems to be under the impression that to own a barony a person has to own the dominium utile; this is wrong. His lack of knowledge is embarrassing. See para. 8 of my petition which refers to the Barony of Prestongrange, recognized by the Lord Lyon in 1999. The barony consisted of 'the dominium directum [superiority] of the three storey tenement Two hundred and Forty-two High Street, Prestonpans'. The Lord Lyon is talking nonsense.

Of course, the Abolition of Feudal Tenure etc. (Scotland) Act 2000 was void to the extent that it purported to legislate with respect to feudal baronies because feudal baronies are dignities granted by the Crown., which are a reserved matter under Sch.5 Scotland Act 1998. Under s.29 Scotland Act 1998, the relevant parts of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 are 'not law'.

With regard to his assertion that personal peerages are granted to a specific person, so are feudal baronies. As with personal peerages, feudal baronies descend amongst a class of persons (such as heirs male) specified in the original grant. Feudal baronies also descend amongst a class of persons; it is just that the class of persons includes assignees. In fact, a significant number of personal peerages in Scotland also include assignees as a destination. The distinction that the Lord Lyon has attempted to draw is therefore meaningless.

He says that it is unclear from the evidence that I even own the barony. What evidence would that be? He cites none. Since he has raised a question mark over my ownership, he is duty-bound to explain himself.

Where do we go from here? It is clear to me that the Lord Lyon's 'opinion' is worthless, which means that you have no arguments 'on the other side'. Will the opinion of the law officers of the Crown be sought now? See my E-Mail to you of 18/07/2016.

He says that he has a copy of my petition dated 17/3/2017. Did you not send him my amended copies after that date? The last amended copy was dated 3/4/2017.

Graham Senior-Milne'

85. On 22/5/2017 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Senior Milne,

I understand that Grant Bavister has explained that your email of 6th May and all documentation relating to your claim has now been passed to me. For

information, you may wish to note that the Ministry of Justice deadline for responding to correspondence is twenty working days.

I have copied your comments of Lord Lyon's report to Lord Lyon and he has today confirmed that he does not wish to add to the comments he has previously made. I am therefore considering how to bring your claim to conclusion and will be in contact when I have established the next stage in the process. As you know, this is not straight-forward, given the lack of precedence, and I am anxious to ensure the appropriate consideration of your claim by the right authorities.

Yours sincerely

Ceri King'

86. On 4/7/2017 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Senior-Milne,

I just wanted to write and apologise for the time it is taking to prepare a formal response to you on your petition.

As you will appreciate, your petition is without precedent and I am seeking advice from a number of authorities on the appropriate process for dealing with your claim.

I will write to you again as soon as I have some definitive guidance.

Yours sincerely,

Ceri King'

87. On 9/10/2017 I wrote to Ceri King by E-Mail as follows:

'Dear Ms King,

It is now over 3 months since your E-Mail below. Could you please answer the following questions:

1. Who is my petition now with?

2. What is he/she doing with it?

3. When will he/she be finished (best estimate)?

4. Are there any key issues holding up the process and, if so, what are they?

5. When he/she is finished, what is the next step?

Graham Senior-Milne'

88. Out of the blue, Ed Ollard, Clerk of the Parliaments, wrote to me in a letter dated 12/10/2017:

HOUSE OF LORDS

Clerk of the Parliaments
House of Lords
London SW1A 0PW
Tel: 020 7219 3000
www.parliament.uk/lords

Mr Graham Senior-Milne
Eastbury
The Lees
Challock
Ashford
Kent TN25 4DE

12 October 2017

Dear Mr Senior-Milne

Barony of Mordington

I am writing in connection with your updated petition to the House of Lords submitted on 4 April 2017. In the petition, you ask the House to recognise that as the Baron of Mordington you are entitled either to participate in the "elections of representative peers" or to receive a writ of summons to sit and vote in the House of Lords. The concept of representative peers was in fact abolished by the Peerage Act 1963, so I have assumed you mean the by-elections of hereditary peers under the House of Lords Act 1999.

A hereditary peer who wishes to be entered in the register of hereditary peers which I maintain under Standing Order 10(5) must petition the House accordingly. If the petition is valid, then its receipt is entered in the minutes of the House of Lords, and the Lord Chancellor is asked to report on the claim. The Barony of Mordington is not a hereditary peerage within the terms of the House of Lords Act 1999. You are therefore not entitled to stand in a by-election to fill vacancies among those people excepted from section 1 of that Act. I am thus unable to accept your petition, to minute its receipt or to refer it to the Lord Chancellor for a report.

For completeness I should add that you are not entitled to a writ of summons because you are not a life peer or a hereditary peer excepted from the provisions of the House of Lords Act 1999.

I am copying this letter to the Head of the Crown Office.

Yours sincerely
EK Ollard

Ed Ollard
Clerk of the Parliaments

89. My main comments on this letter are, very briefly:

a. I have a fundamental constitutional right to petition Parliament. No-one, and certainly not Ed Ollard, has the right to prevent me exercising this fundamental constitutional right. To attempt to do so is a criminal offence (misconduct in public office and probably fraud as well).

b. I submitted my petition to the Crown Office with a view to be entered on the Roll of the Peerage. Ed Ollard has no involvement in the Roll of the Peerage. He only gets involved when a peer wants his name to be included in the Register of Hereditary Peers who want to stand in any by-election of hereditary peers, which he maintains. I made no such request.

c. His statement that he assumed that I wanted to be put on that Register was a device to enable him to write to me (to pull him into the process); nothing more. My petition included a request to participate in the election of representative peers because this was a mechanism established by the Treaty of Union in 1707. The election of representative peers was purportedly abolished by the Peerage Act 1963, which gave all Scottish peers the right to sit and vote in the House of Lords. The point is that the Peerage Act 1963 is void as contrary to the Treaty of Union of 1707, the fundamental constitutional document which established Great Britain and the Parliament of Great Britain. Parliament has no authority to override the document which created it and which defined and limited its own powers. Many constitutional experts and court rulings agree with me on this, include the Lord Advocate, the senior law officer of the Crown in Scotland (McCormick v Lord Advocate 1953 SC 396). I explain all this in my petition (para. 51 *et seq.*).

d. The House of Lords has exclusive cognisance in peerage matters. For Ed Ollard to try to determine my petition is to usurp the jurisdiction of the House of Lords. This is contempt of Parliament and an attempt to pervert the course of justice (given that hearing a peerage claim is a judicial process).

e. The Standing Orders of the House of Lords state (Standing Order 11) that *'any such petition shall be referred to the Lord Chancellor to consider and report upon whether such peer has established his right to be included in the register.'* If a person is a hereditary peer then he has a right to be included in the register, which means that the only basis on which a person can be judged not to have that right is that he is not a hereditary peer. The Lord Chancellor cannot rule that someone is not a hereditary peer if the petition is never referred to him. It follows that this rule necessarily means that people who are not or might not be hereditary peers can petition the House and that such a petition 'shall' be referred to the Lord Chancellor, who then considers and reports on the petition. For Ed Ollard to prevent a petition reaching the Lord Chancellor means that he is usurping the Lord Chancellor's role, which is a breach of the Standing Orders of the House of Lords.

f. Let me show you how the mind of a corrupt official works. Ed Ollard wanted an excuse to block my petition, so he looked in the Standing Orders of the House of Lords to see how this could be done. Standing Order 11 says that *'any hereditary peer'* can apply to be put on the Register. On the face of it, this means that in order to apply you must be a hereditary peer, which means that you cannot apply if you are not a hereditary peer. Clearly, 'you must be a hereditary peer' means 'you must be officially acknowledged to be a hereditary peer'; you cannot be a hereditary peer simply because you say so. In other words, if you are not officially acknowledged to be a hereditary peer, you cannot apply. This is what Ed Ollard broadly said in his letter to me dated 12/10/2017. But is this true? No. If you are already officially acknowledged to be a hereditary peer (excluding those of Ireland), you have already established your right to be put on the Register. There can be no need to petition the House of Lords or for *'the Lord Chancellor to consider and report whether such peer has established his right to be included in the register'* if you have already officially established your right. <u>The Lord Chancellor can only consider and report on whether someone has established his right to be included in the register if, at the time he submitted his petition, his right to be included had not already been established.</u> (Are we agreed on this? Good.) This means that people who have not officially established that they are hereditary peers must be allowed to submit a petition. The whole purpose of submitting a petition is undeniably to allow the Lord Chancellor to assess whether the petitioner is a hereditary peer (because it says so in Standing Order 11), so it is nonsensical to say that a person must be officially acknowledged to be a hereditary peer before he can submit a petition. So, the wording of Standing Order 11 is misleading. What it should say (and what it must mean) is 'any person who claims to be a hereditary peer' can apply, not 'any hereditary peer'. Of course, it is this sort of loose language in statutes, judgments, regulations and so on which creates scope for lawyers to argue endlessly over the meaning of words (and 'earn' their fees accordingly); it also allows officials to spend their time obstructing the very people they are employed to serve, which, in some people's eyes, makes them excellent officials. Perhaps Ed Ollard's seniority is a measure of his skill at obstructing people? He wouldn't be the first. After all, *'bureaucracy is the art of making the possible impossible'* (Javier Pascual Salcedo). On this basis, Ed Ollard is a first-rate official. Is he an honest official? I'll leave you to judge that.

g. So, in the space of a single letter we have misconduct in public office, fraud, an attempt to pervert the course of justice, contempt of Parliament and a breach of the Standing Orders of the House of Lords.

90. Ed Ollard's letter was simply an attempt to scare me off, presumably with the connivance of Cheri King of the Crown Office (he can only have obtained my petition from the Crown Office). I informed him of the above points in a letter dated 15/10/2017 but received no response.

91. On 26/10/2017 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Senior-Milne,

Thank you for your email of 17 October. For information, the Ministry of Justice will always aim to respond to correspondence within 20 working days.

As you will appreciate, in the light of the letter from the Clerk of the Parliaments in relation to your petition, I am seeking legal advice on next steps. Whilst I understand your view that the process is clear, I am afraid all the published guidance relates to claims for hereditary peerages only; as I have previously explained, there is no precedent for claims such as yours.

As soon as I receive the advice, I will write to you again.

Should you wish to make a complaint about my conduct, you may write to the Clerk of the Crown in Chancery, at general.queries@justice.gsi.gov.uk, marking it for the attention of Richard Heaton.

Yours sincerely

Ceri King'

92. On 27/10/2017 I wrote to Ceri King by E-Mail to point out that her statement that there is no precedent for claims such as mine was incorrect. I pointed out that there had been at least four previous claims in relation to feudal baronies (Somerville (1723), Sutherland (1771), Berkeley (1861) and Mar (1867)), three of which were successful. In fact, there have been other claims in respect of feudal baronies as well, including Arundel (1433), Abergavenny (1604) and Fitzwalter (1670), as stated in my petition. Clearly, her claim about lack of precedent was just a delaying tactic.

93. On 9/11/2017 I lodged a complaint about Ed Ollard with the Lord Speaker (Lord Fowler). He referred my complaint to Lord McFall of Alcluith, Chairman of the Committee for Privileges and Conduct.

94. On 1/12/2017 Ceri King wrote to me by E-Mail to tell me that my petition was with the Lord Chancellor and that she understood that the Clerk of the Crown would be writing to me on Monday or Tuesday (4 or 5/12/2017) to report on the Lord Chancellor's decision.

95. Richard Heaton, Clerk of the Crown in Chancery, wrote to me in a letter dated 4/12/2017:

Ministry of Justice

Richard Heaton CB
Permanent Secretary of the Ministry of Justice
Clerk of the Crown in Chancery
102 Petty France
London SW1H 9AJ
T: 020 3334 3709
E: Richard.Heaton@justice.gov.uk

www.gov.uk/MoJ

Graham Nassau Gordon Senior-Milne
Eastbury
The Lees
Challock
Ashford
TN25 4DE

4 December 2017

Dear Mr Senior-Milne,

I am writing in relation to your Petition to the Registrar of the Peerage concerning the Barony of Mordington. In accordance with the terms of the Royal Warrant of 2004, which sets out the procedure for proving claims to Peerages, a report has been obtained from Lord Lyon King of Arms, which you have previously received.

I have placed your Petition and Lord Lyon's report before the Lord Chancellor, who requests that I inform you that he is not satisfied that your claim is made out, and cannot direct that your name be placed on the Roll of the Peerage.

If you wish to pursue your claim by formally petitioning the Crown, please contact Ceri King of the Crown Office.

Yours sincerely, Richard Heaton

Richard Heaton

96. On 8/12/2017 I wrote to Richard Heaton by E-Mail as follows:

'Dear Mr. Heaton,

1. I refer to your letter of 4/12/2017 saying that the Lord Chancellor has asked you to inform me that he is not satisfied that my claim is made out.

2. You say that you placed my petition and the Lord Lyon's advice before the Lord Chancellor, but the Lord Lyon's advice was sent on 20/3/2017 and it is now 8/12/2017; almost 9 months later. In recent E-Mails, Ceri King said that advice was still being sought but this appears to have been untrue. Why did she say this?

3. Why was the Lord Lyon's advice not put before the Lord Chancellor earlier? And of it was put before him earlier, why has it taken him so long to deal with it, given (1) the advice is just over one page, (2) the Lord Chancellor knows nothing of peerage law and so will not have been in a position to assess whether the Lord Lyon's advice was right or wrong, (3) given (2) there was no point in him reading my petition since he was completely unable to assess its merits and (4) given (2) and (3) he will only have spent about two minutes on the matter? In addition, of course, the Lord Lyon's advice is demonstrably wrong. His statement that feudal baronies have never been understood to form part of the peerage of Scotland is flatly contradicted by the evidence I advance and authorities I cite in my petition. Not least of these is Erskine (para. 25), one of the great institutional writers regarded as authoritative in Scottish courts of law, who says that feudal baronies over a certain size were made peerage BY STATUTE in 1503.

4. Since the Lord Chancellor has no knowledge of peerage law and cannot therefore do anything other than accept the 'advice' given to him by the Lord Lyon, he has not actually carried out any actual assessment of my petition; he has effectively left it to the Lord Lyon. This amounts to unlawful delegation and is grounds for judicial review. Did the Lord Chancellor actually assess my petition and, if so, how can he have done this given his ignorance of the law?

5. There is a general obligation in law to give reasons for a decision and failure to do so is grounds for judicial review. How does the Lord Chancellor reconcile his decision not to recognize my feudal barony as a peerage with the fact that there are already at least four feudal baronies included on the Roll of the Peerage? Is he going to write to Prince Charles informing him that he is going to remove the Dukedom of Rothesay from the Roll?

6. The legal authorities make it clear that the Lord Chancellor should seek the advice of the Attorney-General or the 'law officers of the Crown' (see my letter to Ed Ollard of 16/10/2017 copied to Ceri King). Why has this not been done?

7. The authorities make it quite clear that if the Lord Chancellor refuses a petition, he must refer that petition to the House of Lords, which refers it to the Committee for Privileges. The 'Guidance Notes on Succession to a Peerage (with entry onto the Register of Hereditary Peers)', revision October 2009, prepared by Ian Denyer, then Registrar of the Peerage, say that the Lord Chancellor will (no discretion) refer a petition to the Committee for Privileges, where he considers that the petition has not been made out. Debrett's (https://www.debretts.com/expertise/essential-guide-to-thepeerage/claims-to-peerage/, accessed 15/10/2017) says that the Attorney General seeks the advice of Counsel for the Crown and then, if he is not going to recommend issuing a writ, he is obliged (again, no discretion) to refer the matter to the Committee for Privileges. Halsbury ('The Laws of England', 1909, vol. 9, p. 21) says that, since the time of Charles II, if there is any doubt about a petition then it has always been referred to the House of Lords (which refers it to the Committee for Privileges). Is this going to be done?

8. You refer to the possibility of pursuing my claim by petitioning the Crown, but my petition has already been considered by the Crown in the person of the Lord Chancellor. What do you mean by 'petitioning the Crown'? In para. 9 of my petition I quote Mereworth v Ministry of Justice [2011] EWHC 1589 (Ch) where it was said: 'Lord Lyndhurst also asserted, in clear terms, the right of the Committee to decide who was entitled to receive the Writ of Summons and, as

indicated, he said that if a person is entitled to a writ, but the Crown does not issue one, then his remedy is to petition the House. That is the advice that the Crown Office gave Lord Mereworth in the present case and, in my judgment, that advice was correct.' It appears to me then that if the Lord Chancellor refuses to refer my petition to the House of Lords, then I can do so. Is the Lord Chancellor going to refer my petition to the House of Lords?

Please respond to my questions above.

Yours sincerely,

Graham Senior-Milne'

97. On 9/12/2017 I wrote to Richard Heaton by E-Mail as follows (my emphasis):

'Dear Mr. Heaton,

1. I refer to my E-Mail below.

2. In your letter to me of 4/12/2017, you say 'In accordance with the terms of the Royal Warrant of 2004, which sets out the procedure for proving claims to peerages, a report has been obtained from the Lord Lyon King of Arms...' But the only reference to the Lord Lyon in the warrant is in relation to 'preparing' the roll; that is, setting it up in the first place. This is proved by the previous paragraph which states 'The Roll is to be prepared and kept by Our Secretary of State.' This makes it clear that there is a difference between 'preparing' and 'keeping'. Peerage claims are part of the process of keeping the roll.

3. Thus, under the warrant, the Lord Lyon has no defined role in relation to peerage claims - contrary to what you said.

4. If you sought the Lord Lyon's advice on the basis that you assert (that it was part of the procedure laid down in the warrant), then you were wrong to do so. This is a basic failure of process and surely must invalidate the process in its entirety. You thought you had to get the advice of the Lord Lyon but you were wrong. Given that you were required to obtain advice of some sort, it follows that you should have obtained advice from someone else. This is particularly so because the Lord Lyon is not an expert in peerage law; he is an expert in succession to Scottish arms, which is something distinct. In fact, the Lord Lyon's complete lack of knowledge of peerage law is proved by the nonsensical nature of his advice (Feudal barons were the original peers of the realm, so it is utter nonsense to say that feudal barons have never been part of the peerage. Having established that feudal barons were the original peers of the realm, the question then becomes 'How did they cease to be peers?' Of course, the Lord Lyon's assertion conveniently allowed him to avoid answering that question.).

5. Having incorrectly sought the Lord Lyon's advice, how to propose to correct the situation? I am surprised that you, as a barrister, have misinterpreted the warrant in the way you have.

Yours sincerely,

Graham Senior-Milne'

98. On 12/12/2017 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Senior-Milne,

Thank you for your emails to Richard Heaton of 8th and 9th December, which have been passed to me for response.

In light of the Lord Chancellor's decision, I would be grateful if you could confirm whether or not you wish to pursue your claim? If so, your Petition will be referred to the relevant Law Officer, and subsequently, if appropriate, to the Committee for Privileges of the House of Lords.

I look forward to hearing from you in due course.

Yours sincerely

Ceri King'

99. On 14/12/2017 I wrote to Richard Heaton by E-Mail as follows:

'Dear Mr. Heaton,

In reply to my E-Mail to you of 8th and 9th December, I have received the following reply from Ceri King. She says that you have asked her to respond but, unfortunately, she has not answered any of the questions I put to you. Could you please either do this yourself or ask her to do it?

Further, she now says that, if I wish to continue with my petition, it will be referred to the relevant law officer. Are you now accepting that the proper procedure is to obtain the advice of the relevant law officer (who I assume from the authorities is the Attorney-General), and, if it is the proper procedure, why was this proper procedure not followed when I first submitted my petition some 17 months ago?

The point is that if it becomes clear that you knew what the proper procedure was 17 months ago but did not follow that procedure, you have simply been stonewalling me for the last 17 months - and if you have been stonewalling me for the last 17 months, what is to prevent you from stonewalling me for the next 17 months? You will accept, I think, that there must come a point at which it is reasonable for me to conclude that you actually have no intention of properly processing my petition and intend to stonewall me indefinitely. Your reasons for not obtaining the advice of the relevant law officer earlier are relevant in this context.

Please note that my E-Mail address is grahangm@john-lewis.com.

Yours sincerely,

Graham Senior-Milne'

100. On 21/12/2017 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Senior-Milne,

Thank you for your email to Richard Heaton of 14 December 2017, which has been passed to me for response.

We are sorry that you consider that your application has been 'stonewalled'. That has never been, and is not our intention. As you will appreciate, it would not have been appropriate to refer your claim, or any Petition to the Law Officers, until that claim had been given full consideration by the Lord Chancellor, in consultation with relevant persons. That process being now concluded, and the Lord Chancellor having declined to accept your claim, it is now proper to refer the Petition as described.

On that basis, as previously requested, we would be grateful if you could now confirm that you wish to pursue your claim. We will then be in a position to take this matter forward on your behalf.

Yours sincerely

Ceri King'

2018

101. On 3/1/2018 I wrote to Lord McFall of Alcluith by E-Mail as follows:

'Dear Lord McFall,

The Lord Speaker wrote to me on 14/11/2017 to say that he was going to refer my complaint against Ed Ollard and my peerage claim to you. He wrote that he was copying his letter to the Clerk to the Committee for Privileges and Conduct and your secretary. I have heard nothing since. Could you please confirm that these matters have been referred to you and let me know what steps you intend to take? I attach copies of both items.

Yours sincerely,

Graham Senior-Milne'

102. On 4/1/2018 I wrote to Ceri King by E-Mail as follows:

'I refer to your E-Mail of 21/12/2017 below. The Lord Chancellor, having apparently obtained advice and rejected my petition, you now intend to seek further advice and to submit that advice to the Lord Chancellor. Can you please tell me:

1. Has this procedure (obtaining a second opinion after a petition has been rejected) ever been followed before?

2. If not, is this procedure laid down (specified) anywhere in writing?

3. If this procedure is not laid down (specified) anywhere in writing and it has never been followed before, has the Lord Chancellor agreed to reconsider his rejection on the basis of the new advice you propose to obtain?

4. If this procedure is not laid down anywhere, has not been followed before and the Lord Chancellor has not agreed to reconsider his rejection of my petition, on what basis do you believe that the Lord Chancellor will reconsider his rejection of my petition? At the very least, you will need to obtain the Lord Chancellor's agreement to this proposed course of action. Can you please do this and ask the Lord Chancellor to confirm his agreement to me in writing?

If the Lord Chancellor will not agree to reconsider his rejection of my petition on the basis of the new advice, then the proper procedure is for him to refer it to the House of Lords, which refers it to the Committee for Privileges. If the Lord Chancellor will not agree to reconsider my petition and refuses to refer it to the House of Lords, I will have to petition the Queen personally with a full history of the obstruction I have faced and ask her to refer it directly to the House of Lords.

For the avoidance of doubt, I have no intention of abandoning my petition. I note that Mr. Heaton declines to reply to my letters to him and that you have not answered any of the questions I have asked.

Graham Senior-Milne'

103. On 10/1/2018 Lord McFall of Alcluith wrote to me by E-Mail as follows:

'Dear Sir,

Thank you for your email to the Lord Speaker of 9 November 2017 regarding the conduct of the Clerk of the Parliaments. The Lord Speaker referred it to me as Chairman of the Committee for Privileges and Conduct.

Having reviewed the case, I am satisfied that because your feudal barony is not an hereditary peerage, neither the jurisdiction nor the standing orders of the House of Lords are engaged. The Clerk of the Parliaments therefore acted properly in refusing to accept your petition. As far as the House of Lords is concerned, the matter is now closed.

Yours sincerely,

The Rt Hon The Lord McFall of Alcluith

Senior Deputy Speaker, House of Lords'

104. On 10/1/2018 I wrote to Lord McFall of Alcluith by E-Mail as follows:

'Dear Lord McFall,

I refer to your E-Mail below. You have no authority to determine a peerage claim; Ed Ollard has no authority to determine a peerage claim (which was the basis of my complaint against him). I will refer the matter back to the Lord Speaker and also make a complaint against you. The law is quite clear; a peerage claim, if not accepted by the Lord Chancellor, is referred BY THE HOUSE to the COMMITTEE FOR PRIVILEGES - not to the Chairman of the Committee for Privileges. Not only do you have no authority to do what you have purported to do (determine my peerage claim), you have absolutely no knowledge of the relevant law. In this context, I would point out (as I state in my petition) that there are currently four feudal baronies on the Roll of the Peerage, including the Dukedom of Rothesay, held by the Prince of Wales. If necessary, I will petition the Queen directly and ask her to refer the petition to the House of Lords.

If you believe that you do have authority to personally determine a peerage claim (that is, without referring the claim to the Committee), could you please tell me where this authority derives from; that is, cite the legal source?

Yours sincerely,

Graham Senior-Milne'

105. On 10/1/2018 I wrote to Lord Fowler by E-Mail as follows:

'Dear Lord Speaker,

I wish to make a formal complaint against Lord McFall on the basis (1) that he has purported to determine my peerage claim (that is, rule that I do not possess a peerage, which is what he has done) when he has no authority to do so, and (2) that he has used this purported authority to dismiss my complaint against Ed Ollard (that is, he has said that because my barony is not a peerage - a matter he has no authority to determine - Ed Ollard was right to dismiss my claim, but Ed Ollard has no more authority to dismiss my claim than Lord McFall; that is, none at all). This is explained below.

The law is quite clear; a peerage claim, if not accepted by the Lord Chancellor, is referred BY THE HOUSE to the COMMITTEE FOR PRIVILEGES - not to the

Chairman of the Committee for Privileges. Not only does Lord McFall have no authority to do what he has purported to do (determine my peerage claim), he has absolutely no knowledge of the relevant law. In this context, I would point out (as I state in my petition) that there are currently four feudal baronies on the Roll of the Peerage, including the Dukedom of Rothesay, held by the Prince of Wales. If necessary, I will petition the Queen directly and ask her to refer the petition to the House of Lords.

In acting (purporting to determine - rule on the merits of - my peerage claim) when he has no authority, Lord McFall has not acted fairly. In other words, he is in breach of the duty of objectivity specified in the Code of Conduct for Members of the House of Lords.

There are thus two aspects to my complaint that I am asking you to address: (1) the need to process my petition properly (according to the law) by referring it to the Committee for Privileges and (2) Lord McFall's misconduct.

Yours sincerely,

Graham Senior-Milne'

106. On 10/1/2018 I wrote to Lord Fowler by E-Mail as follows:

'Dear Lord Speaker,

Further to my E-Mail below, Lord McFall has refused to allow consideration of my peerage claim by the Committee for Privileges on the basis that I do not possess a peerage. But how can he properly consider that I do not possess a peerage if my peerage claim has not been properly considered? This amounts to saying, in effect, 'I am not going to allow your peerage claim to be considered because I consider, without having properly considered your claim (because (1) I have no authority to consider your claim and (2), even if I did, I know absolutely nothing of the relevant law), that you do not possess a peerage.' In short, he is saying 'You cannot claim to be a peer because I say you are not a peer, even though I lack both the authority and the knowledge to make such a ruling.' It is preposterous, literally preposterous

To my knowledge, this is the first time in the entire history of the House of Lords that a senior officeholder has attempted to prevent a peerage claim from even being considered. Well, that's a first. But, if I have a constitutional right to petition the House (and I do - and have done so - my petition is addressed to the House) on what basis does Lord McFall purport to be able to prevent me from petitioning the House? Once a petition is submitted to the House, it is for the House to refer it to the Committee for Privileges, and if the House refers a petition to the Committee, it is not for the Chairman of the Committee to refuse to put that petition before the Committee, since this would amount to openly defying the will of the House.

Even in the most corrupt periods of our national life (such as the 18th century), no-one has ever dared to defy both the House and the constitution (the right to petition) in such a manner. Perhaps this is a reflection of the morals of the age and the moral stature of the people who now occupy the seats in the House of Lords. Perhaps the hereditary peers were not so bad after all. How shrunken we have become!

I have petitioned the House; it is your duty to put my petition before the House.

Yours sincerely,

Graham Senior-Milne'

107. On 11/1/2018 I wrote to the House of Lords Commissioner for Standards by E-Mail as follows:

'Dear Madam,

Complaint against Lord McFall of Alcluith

I wish to make a complaint against Lord McFall on the basis of the E-Mails below and related correspondence and papers (including, in particular, my petition and my letter to Ed Ollard dated 16/10/2017, which both Lord McFall and the Lord Speaker have copies of and which I hereby incorporate into this complaint), to the effect that Lord McFall is in breach of the Code of Conduct for Members of the House of Lords; including, but not limited to, the requirements that a member must act objectively and honestly. Lord McFall has acted dishonestly because he purports to be able to dismiss (rule on the merits of) a peerage claim submitted to the House of Lords. He did this by saying that my feudal barony is not a hereditary peerage and since I am claiming that I hold a hereditary peerage, he is purporting to rule, not in effect but actually, on my peerage claim. He has no such authority and he knows that he has no such authority. He has failed to act objectively by using this fictitious power to dismiss my peerage claim to protect Ed Ollard from my complaint against him, which it is the duty of the Committee for Privileges, not Lord McFall, to investigate. Ed Ollard also purported to dismiss my peerage claim but he has no more power than Lord McFall to dismiss my peerage claim. Even if my claim is totally without merit, neither Lord McFall nor Ed Ollard have any power to rule to that effect; that is within the exclusive jurisdiction of the House of Lords itself (the Committee for Privileges merely reports to the House on the merits of a claim, but it is the House which makes the final decision). In purporting to dismiss my claim, Lord McFall and Ed Ollard have usurped the jurisdiction of the House of Lords.

You will see that I have asked the Lord Speaker to ensure that my petition is properly dealt with; that is, put before the House (it is addressed to the House). This is one matter that needs to be addressed. The other matter is my complaint against Lord McFall and it appears that this is your responsibility. What you need to investigate is simple:

Do I have the right to petition the House of Lords? In this context, see para. 9 of my petition where I quote Lord Lyndhurst about petitioning the House. Has Lord McFall tried to prevent my petition from being considered by the House of Lords and does he have the right to do this?

Who has exclusive jurisdiction to rule on the merits of a peerage claim, Lord McFall or the House of Lords? Has Lord McFall purported to rule on the merits of my claim? Has he ruled that it has no merit; that is, that I am not a peer?

You will appreciate that if you find that Lord McFall has acted properly, you will, in effect, be ruling that the House of Lords does not have exclusive jurisdiction in such matters. This will overturn the law of this land which has been settled for many centuries.

Yours sincerely,

Graham Senior-Milne, Baron of Mordington'

108. On 12/1/2018 I wrote to Lord Fowler by E-Mail as follows (with minor spelling corrections):

'Dear Lord Speaker,

I am writing further to my complaint against Lord McFall. In my last E-Mail to you I said that you have a duty to ensure that my petition is put before the House. I think it is necessary for me to explain this matter further, since you are not familiar with the procedure for handling peerage claims.

The 'Companion to the Standing Orders and Guide to the Proceedings of the House of Lords' covers the question of public petitions on pages 44 and 45. However, the petitions referred to are distinct from petitions relating to peerage claims. This is because the types of petitions dealt with on pages 44 and 45 will ask the House to do something that it does not have a legal duty to do; that is, they ask the House to exercise its discretion.

Petitions relating to peerage claims are entirely different and this is because such claims deal with matters of legal rights (the right to sit in the House of Lords). As such, the House is actually operating as a court of law; it makes a decision about a person's legal rights and does so according to the law (largely previous case law).

Now, when dealing with a discretionary matter, the House can refuse to consider a petition at all, as is evident from the Companion to the Standing Orders (pages 44 and 45). But when the House is acting as a court in determining a person's legal rights, it cannot (and this applies to courts generally) refuse to consider the matter at all. This would be contrary to the fundamental constitutional right of access to a court (the right to have matters determined by a court) and contrary to Article 6 of the European Convention on Human Rights (ECHR). Article 6 ECHR (the right to a fair trial) comes into play here, and particularly the right, under Article 6, to have matters resolved according to law; that is, by a court of law. Now, s.6 Human Rights Act 1998 excludes (or purports to exclude) the House of Lords from the operation of the Act by providing that the House of Lords is not a 'public authority' for the purposes of the Act, but s.6 will be in breach of (incompatible with) Article 6 ECHR itself in this regard. In other words, to the extent that s.6 Human Rights Act 1998 purports to exclude a person's right to have his legal rights and obligations determined by a court of law, the Act is itself unlawful (and therefore grounds for seeking a declaration of incompatibility under s.4 Human Rights Act 1998). A signatory to the Convention cannot simply pass laws disapplying the Convention; this would make the Convention utterly toothless.

The long and short of the above is that the House of Lords has a legal duty to consider a peerage claim; it has no discretion to refuse to consider such a petition, as it has with other types of petition. In short, for Lord McFall to seek to prevent the House from considering my petition is comparable to a member of court staff refusing to put a claim before a court; he has no power to do such a thing - and neither do you.

I hope this helps.

Graham Senior-Milne'

109. On 12/1/2018 I wrote to the House of Lords Enquiry Service (hlinfo@parliament.uk) as follows:

'Can you please tell me what the procedure is for petitioning the House (including who a petition should be sent to) and whether any person/office holder has a right to prevent a petition submitted to the House from being considered by the House; that is whether any person/office holder has, in effect, the right to determine (rule on the merits of) a petition, given that the House of Lords (not a committee or office holder) has exclusive jurisdiction in peerage matters?'

110. On 15/1/2018 Lord Fowler wrote to me by E-Mail as follows:

'Dear Sir,

Thank you for your recent emails to the Lord Speaker and the Senior Deputy Speaker. The Lord Speaker has asked me to reply.

As the Senior Deputy Speaker said to you in his email of 10 January, as far as the House of Lords is concerned, the matter is now closed. By "the matter", he meant your complaint against the Clerk of the Parliaments but also all aspects of your attempts to refer your claim to a feudal barony to this House.

We have nothing further to add.

Regards,

Patrick Milner'

111. On 15/1/2018 I wrote to the House of Lords Commissioner for Standards by E-Mail as follows:

'Dear Madam,

Complaint against Lord McFall of Alcluith and the Lord Speaker

I wish to clarify and, if necessary, re-characterize/amend my complaint against Lord McFall, as follows.

1. *My petition (peerage claim) was originally submitted to the Crown Office in accordance with written guidance from the Crown Office and the Lord Lyon. The Crown Office refers a petition to the Lord Chancellor, who seeks the advice of the law officers of the Crown (the Attorney-General I believe). If the advice of the law officers of the Crown is that the claim is made out, then the Lord Chancellor will generally accept the claim without referring it to the House of Lords. If the advice of the law officers of the Crown is that the claim is not made out, then the Lord Chancellor will refer it to the House of Lords, which refers it to the Committee for Privileges. It is to be noted that the Committee for Privileges is a committee of the whole House, so the House refers the petition to itself; it merely resolves itself into a committee of the whole House by means of an order made on the motion: "That the House do resolve itself into a committee."*

2. *The Clerk of the Parliaments is not involved in this process. The only time when the Clerk of the Parliaments is involved in a peerage claim is when the petitioner wants to be included on 'the register of hereditary peers who wish to stand in any by-election of hereditary peers', which the Clerk of the Parliaments maintains. If a peer who has not previously received a writ of summons wishes to be entered in this register of hereditary peers, then,*

under rule 11 of the Standing Orders, he must petition the House. Rule 11 says: 'Any hereditary peer (not previously in receipt of a writ of summons) who wishes to be included in the register maintained by the Clerk of the Parliaments pursuant to Standing Order 10(5) shall petition the House and any such petition shall be referred to the Lord Chancellor to consider and report upon whether such peer has established his right to be included in the register.'

3. *Rule 11 says that the petition 'shall be referred to the Lord Chancellor'. The use of the word 'shall' means that this is a mandatory requirement; there is no discretion not to refer a petition to the Lord Chancellor.*

4. *Not only was the Clerk of the Parliaments acting outside his remit in responding to my petition at all (he was not involved in the process since I was not applying to be entered on the register he maintains), but, even if the matter had been within his remit, in refusing to refer my petition to the Lord Chancellor, he was not only acting in breach of rule 11 of the Standing Orders but he was also, in effect, purporting to determine (rule upon the substantive merits of) my peerage claim. He has no jurisdiction to do this because peerage claims fall within the exclusive jurisdiction of the House of Lords itself. This is why a petitioner petitions the House, not the Clerk of the Parliaments.*

5. *The question of whether the Clerk of the Parliaments was right to say that my petition has no merit is therefore utterly irrelevant because it is for the House to decide the matter, not him. In fact, the Clerk of the Parliaments opinion is ultra vires and therefore a nullity in law; in law it does not exist (the same applies to Lord McFall's 'opinion'). In addition, of course, he knows nothing of the relevant law, which means that even if the matter was within his remit, he was incompetent to judge it.*

6. *The above was the essence of my complaint to Lord McFall about Ed Ollard and this was apparent from my complaint, my letter to Ed Ollard, my petition and relevant correspondence.*

7. *When he responded to my complaint against Ed Ollard, Lord McFall chose (and not accidentally - see below) to concentrate on the one issue that was completely irrelevant (the merits of my claim) and ignore the substance of my complaint against Ed Ollard, which was that he (Ed Ollard) has no jurisdiction to consider the merits of my claim and was in breach of rule 11 of the Standing Orders in refusing to refer my petition to the Lord Chancellor.*

8. *Lord McFall was therefore wrong to dismiss my complaint against Ed Ollard on the basis that he (Ed Ollard) was right to say that I am not a peer. The question is whether Lord McFall did this accidentally or intentionally. If Lord McFall simply made a mistake then he was not dishonest, but if he knew that Ed Ollard had no right to determine my petition and was required to refer the matter to the Lord Chancellor, then he acted intentionally, knowing that what he said was wrong. Intentionally saying something you know to be wrong (that is, knowingly making a false statement), whether by commission or omission, amounts to acting dishonestly. To believe that my complaint against Ed Ollard should be dismissed on the grounds that Ed Ollard was right to say that I am not a peer would require Lord McFall to believe that Ed Ollard had:*

a. *the right to disregard rule 11 of the Standing Orders (to the effect that a petition must be referred to the Lord Chancellor) and*

b. *the right to rule on the merits of my petition.*

9. *Now Lord McFall knew that Ed Ollard was required to refer my petition to the Lord Chancellor and he knew that Ed Ollard had no jurisdiction to rule upon the merits of my claim, because I made both of these things clear (by reference to the relevant authorities) in my letter to Ed Ollard, in my complaint against Ed Ollard and in related correspondence.*

10. *So, because I made these points quite clear, Lord McFall cannot claim to be ignorant of them, and, not being ignorant of them, his failure to take them into account can only have been intentional - and thus dishonest.*

11. *On one critical level, Lord McFall's dishonesty is easy to prove. He asserted that I am not a peer, and this necessarily means that Lord McFall also asserted that he has the requisite knowledge and expertise to assess whether or not I am a peer (and to assess the weight that should be given to the opinions of others on the subject). This assertion is false and can easily be proved to be false (just ask him whether he is an expert in peerage law and, in particular, Scottish peerage law - the public record shows that he isn't). After all, the honest thing to have done would have been to say: 'My opinion is x but I have no knowledge of the subject and am not qualified to assess it'. But, of course, this would amount to giving an opinion and, at the same time, saying that the opinion is worthless (and therefore not an opinion), which Lord McFall would clearly not do. But his refusal to acknowledge his own ignorance is to assert that he is not ignorant (has sufficient knowledge of the subject), and this, to put it simply, is a lie. In professional spheres (say, solicitors and accountants) to give an opinion on a matter when you know that you do not have the relevant knowledge and experience to properly form an opinion is a serious breach of the rules of professional conduct. By extension, it is also serious misconduct for Lord McFall to act in such a way.*

12. *I have shown that the proper procedure is to petition the House of Lords. Once a petition is submitted to the House, no-one has the right to prevent it from being considered by the House; not the Clerk of the Parliaments, not the Deputy Lord Speaker and not the Lord Speaker himself, because to do so is to usurp the exclusive jurisdiction of the House in such matters.*

13. *I have properly petitioned the House, but my petition is being prevented from being put before the House. This is not being done accidentally; it is intentional. To intentionally prevent the House from exercising its jurisdiction must be misconduct of the most serious kind.*

14. *As I have pointed out repeatedly, there are four feudal baronies currently recorded on the Roll of the Peerage and one of these is the Dukedom of Rothesay, held by the Price of Wales. Of course, when Lord McFall asserts that I am not a peer, he is also necessarily asserting that the Prince of Wales is not a peer by virtue of holding the Dukedom of Rothesay - but I have a feeling that he will not communicate this fact to the Prince of Wales. When it comes to considering the merits of my claim, this fact is rather hard to argue against. It is pretty much conclusive proof of my right. But we haven't even got to considering the merits of my claim because those involved (Ed*

Ollard, Lord McFall and now the Lord Speaker himself - see below) are obstructing me. It may be that they consider that they are 'doing the right thing', but, if so, they are overlooking something rather important - the rule of law.

15. *While the conduct described above amounts to serious breaches of the Standing Orders of the House and, where relevant, the Code of Conduct for Members of the House of Lords, it is also criminal in that it amounts to misconduct in public office (the people concerned are subject to the criminal law in the same way as anyone else).*
16. *Today (15/1/2017) I received an E-Mail from Patrick Milner, Private Secretary to the Lord Speaker, which said: 'Thank you for your recent emails to the Lord Speaker and the Senior Deputy Speaker. The Lord Speaker has asked me to reply. As the Senior Deputy Speaker said to you in his email of 10 January, as far as the House of Lords is concerned, the matter is now closed. By "the matter", he meant your complaint against the Clerk of the Parliaments but also all aspects of your attempts to refer your claim to a feudal barony to this House. We have nothing further to add.'*
17. *I wish to make a further complaint against the Lord Speaker on the basis that it is clear that (for the reasons given above, in my letter of complaint against Ed Ollard, in my letter of complaint to you, in my petition and in related correspondence) my complaint against Ed Ollard is well-founded, that it is clear that Lord McFall is obstructing both my complaint against Ed Ollard and my peerage claim, that the Lord Speaker has knowingly and intentionally become a party to this conduct and that this conduct is dishonest, and therefore a breach of the Code of Conduct, as well as criminal.*
18. *What I have described is serious corruption amongst the most senior members/officers of the House of Lords. They are only acting in this way because they believe that they will get away with it; in other words, that you will not do your job. After all, if they knew with certainty that such conduct would put them in prison or ruin their precious careers, would they have done what they have done? Clearly not.*
19. *Your job is to show them that you are not as corrupt as they think you are.*

Yours sincerely,

Graham Senior-Milne, Baron of Mordington'

112. On 16/1/2018 the House of Lords Enquiry Service wrote to me by E-Mail as follows:

'Dear Mr Senior-Milne,

I understand that the Clerk of the Parliaments has refused to accept your petition because you are not an hereditary peer and therefore neither the jurisdiction nor the standing orders of the House of Lords are engaged. The Senior Deputy Speaker, I understand, has recently upheld this decision and wrote to you accordingly.

Kind regards,

Enquiry Service
House of Lords

London SW1A 0PW
Tel: 020 7219 3107 Freephone: 0800 2230 855
www.parliament.uk/lords'

In other words, they simply refused to answer a general question about procedure.

113. On 17/1/2018 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Senior-Milne,

Thank you for your confirmation that you intend to pursue your claim. As set out below, we will now refer the petition to the appropriate Law Officer.

For the avoidance of doubt, in so doing we are not seeking a second opinion from the Lord Chancellor. Rather, the Petition, being contested, is being referred for onward adjudication. This is done through a preliminary reference to the Law Officers, on behalf of the Crown. Subject to the Law Officer's advice, your claim may then be referred to the Committee of Privileges.

Yours sincerely,

Ceri King'

114. On 18/1/2018 I wrote to Ceri King by E-Mail as follows (my emphasis):

'Dear Ms. King,

Thank you for your E-Mail clarifying the process you will be following with respect to my petition. It appears that I owe you an apology. My understanding was a petition is referred to the Lord Chancellor, who then seeks the opinion of the Attorney-General. My understanding was based on various sources, including Halsbury's 'Laws of England', as cited in my letter to Ed Ollard dated 16/10/2017. In an E-Mail to me dated 22/7/2016, Grant Bavister referred me to Atkin's 'Court Forms', 1987, Vol. 31. I have obtained the 1998 edition and attach the relevant pages in pdf form. This says:

1. (p. 173 - highlighted in yellow) that a petition relating to a pre-Union (pre-1707) Scottish peerage, which applies in my case, is presented through the Scottish Office, which refers it to the Lord Advocate, as opposed to the Attorney-General. This makes sense because a Scottish peerage claim is primarily a matter of Scottish law and the Attorney-General would therefore not be the appropriate person to give an opinion on such a claim.

2. (p. 175, para. 3 - highlighted in yellow) 'Any person pursuing a claim to a peerage after the Lord Chancellor has refused the application for a writ or praying for the termination of an abeyance must proceed by petition to the Crown, presented through the Home Office. The Crown then refers the petition, accompanied by the report of the Attorney-General or the Lord Advocate to the House of Lords, and the House refers it to the Committee for Privileges.' This makes it clear that a petition is only submitted to the Crown AFTER the Lord Chancellor has refused an application (see the bottom of para. 2 on page 175), so the reference to the Attorney-General or Lord Advocate takes place AFTER the Lord Chancellor has refused an application. I understand that this is the procedure you are referring to in your E-Mail below. <u>The only thing here, as far as I can see, is that my petition is addressed to the House of Lords, whereas it appears that it should be addressed to the Sovereign ('To the Queen's Most Excellent Majesty' - see the form of a petition on page 187 of the attached).</u>

The only query I have about your E-Mail is that you say: 'your claim MAY [my emphasis] then be referred to the Committee of Privileges'. However, my understanding is that the process is not discretionary. If a person persists in a claim after a refusal by the Lord Chancellor and submits a petition for that purpose, that petition MUST be referred to the Attorney-General or Lord Advocate. As quoted above, Atkin's says 'The Crown then refers the petition, accompanied by the report of the Attorney-General or the Lord Advocate to the House of Lords, and the House refers it to the Committee for Privileges.' It then continues 'This rule...' and the use of the word 'rule' means that this is a mandatory procedure. It appears that the only situation in which a report by the Attorney-General or Lord Advocate might not be referred to the House of Lords is when the report recommends granting the petition and that recommendation is accepted by the Crown.

The main reason why the process is not discretionary is because a petition does not ask for the exercise of a discretion, it asks for the recognition of a legal right (the right to a writ of summons or, today, the right to be recognized as a peer and, if applied for, to stand in any by-election of hereditary peers). Because this is an issue of legal rights, the process is a judicial one undertaken and determined according to law. This means that the House of Lords is acting as a court of law. To decline to allow this process to take place would be to deny a person's fundamental constitutional right to have their legal rights (or claims to such rights) determined in a court of law according to the law. To do otherwise would mean that a person's legal rights are determined by something other than a court of law. This would also be a breach of the right to a fair trial under Article 6 European Convention on Human Rights, which includes the right to have one's legal rights and obligations determined 'according to the law', and this includes the matter being heard an independent and properly constituted tribunal; in other words, a court of law. As I quote in para. 9 of my petition, Lord Birkenhead, Lord Chancellor, said in Viscountess Rhondda's claim [1922] 2 AC 339: "The writ is not to be issued capriciously or withheld capriciously at the pleasure of the Sovereign or of this House [or anyone else]. It is to be issued, or withheld, according to the law relating to the matter, and if, under that law, it appears that there is a debt of justice to the petitioner in that matter, the writ will issue and, if not, it cannot issue." A body which determines a matter of legal rights according to the law is a court of law.

On the above basis, can you please confirm:

1. That my petition is acceptable in its current form, even though it is addressed to the House of Lords and not the Sovereign. I am quite happy to submit an amended petition.

2. That, given 1, my petition will be referred to the Lord Advocate for him to report on (because it relates to a pre-Union peerage).

3. That if the Lord Advocate recommends that my petition should be refused, it WILL be referred to the House of Lords, which WILL refer it to the Committee for Privileges.

I do think that we have to be able to agree on the basic process. It will avoid so many potential problems, which I am keen to do as you are.

Yours sincerely,

Graham Senior-Milne'

115. On 22/1/2018 I wrote to the House of Lords Commissioner for Standards by E-Mail as follows:

'Dear Madam,

In relation to my complaint against Lord McFall and the Lord Speaker, I wish to draw your attention to paragraph 14 of my petition, which is quoted below. This shows that the right to petition Parliament is a fundamental constitutional right and that Lord McFall and the Lord Speaker have no authority whatsoever to obstruct a petition to the House of Lords. To assert that they have such authority is dishonesty of the most serious possible kind. It is also a criminal offence, both an attempt to pervert the course of justice (since the House of Lords acts as a court of law when hearing a petition - it determines issues of legal rights according to law) and misconduct in public office. I explain these offences in my letter to Ed Ollard dated 16/10/2017.

'14. That Erskine May ('A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament', 1851, Ch. 19, p. 381), the recognized authority on parliamentary procedure and practice, states (and I assume that the current version, the 24th edition, says the same): 'The right of petitioning the Crown and Parliament for redress of grievances is acknowledged as a fundamental principle of the constitution [my emphasis].' For the avoidance of doubt, a right to petition means a right to have a petition heard and considered, not a right to submit a petition which is then thrown in the waste paper basket by an official without being heard or considered. Clearly, a person has a 'grievance' (basis for a complaint), and can therefore seek redress, if he is the holder of a title but is not recognized as the holder of that title, as would be the case with any owner of any property or any holder of any rights who is not acknowledged as the owner of that property or holder of those rights. As authority for this proposition, Erskine May cites the Bill of Rights 1688 ('Right to petition - That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall.' and Magna Carta 1297 ('No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right [my emphasis].'). Clearly, a refusal to consider a petition amounts to denying a person justice, or an opportunity to obtain justice, which is the same thing, so it follows that Parliament is obliged to consider my petition. To do otherwise would be in breach of both Magna Carta and the Bill of Rights and, as such, a denial of justice at the most fundamental level. It would amount to the House of Lords affirming that it is no longer bound by Magna Carta or the Bill of Rights (if it can ignore one fundamental constitutional right, it can ignore them all) and has therefore overthrown the constitution and become no more than a gang of outlaws.'

If I need to submit this by postal mail please tell me.

Yours sincerely,

Graham Senior-Milne'

116. On 30/1/2018 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Milne,

In response to your queries I can confirm that your Petition is fine as drafted, there is no need to update.

On points two and three, we are actively working with Scottish Law officers to confirm responsibility for the petition, and will contact you as to next steps as soon as we are able. We will in any event provide you with an update on this by 8 February.

Yours sincerely,

Ceri King'

117. On 9/2/2018 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Milne,

With further apologies. I am just attempting to clarify procedural matters with the Scottish Law Officers but hope to progress you Petition as soon as possible.

I will write with a further update as soon as I can.

Yours sincerely

Ceri King'

118. On 10/2/2018 I wrote to the House of Lords Commissioner for Standards by E-Mail as follows:

'With reference to my E-Mail below, I note that the Commissioner's Annual Report for 2016-17 says 'Of course were there to be evidence of possible criminal behaviour the allegation should be reported to the police, as has happened previously.' My complaint contains specific and detailed allegations of criminal behaviour (attempting to pervert the course of justice and misconduct in public office) by the Lord Speaker, Lord McFall and Ed Ollard. I trust that these will be reported to the police as evidence of possible criminal behaviour.

Graham Senior-Milne'

119. On 20/2/2018 the House of Lords Commissioner for Standards wrote to me by E-Mail as follows:

HOUSE OF LORDS
Commissioner for Standards

House of Lords
London
SW1A 0PW

Tel: 020 7219 7152
lordsstandards@parliament.uk
www.parliament.uk/lords

Mr Senior-Milne
Eastbury
The Lees
Challock
Ashford
Kent
TN25 4DE

20 February 2018

Dear Mr Senior-Milne,

Thank you for your letters of 11 and 15 January.

Your letters made a complaint that the Senior Deputy Speaker, Lord McFall of Alcluith, has breached the House of Lords Code of Conduct by his failure to act objectively and honestly, and that the Lord Speaker, Lord Fowler, has also breached the Code by acting dishonestly. In accordance with the process set out in the *Guide to the Code of Conduct*, I have carried out a preliminary assessment of the complaint and am writing to let you know the outcome.

The *Guide to the Code of Conduct* makes it clear (paragraph 116) that policy matters are not within my remit, and it is clear to me that you are questioning matters of policy and judgments made by the Senior Deputy Speaker and the Lord Speaker in their official roles as office holders in the House of Lords. As such, the complaint is not within the scope of the Code of Conduct and I am unable to investigate it.

Yours sincerely,

P.P.

Lucy Scott-Moncrieff, CBE
Commissioner for Standards

120. On 7/3/2018 Ceri King wrote to me by E-Mail as follows:

'Dear Mr. Senior-Milne,

My sincere apologies for the delay with the progress of your claim so far. I wanted to offer some explanation of the cause for the delay, in order to explain

why we have not yet been able to provide a detailed update on the next stage of progress of your claim.

Our colleagues are currently in the process of clarifying which team should, as a matter of law, advise the Crown on the specific merits of the claim. The decision on responsibility is therefore currently being determined, and once that determination is communicated to us we will be in a position to provide you with an update on next steps.

We are doing as much as possible within our power to move this forward and will be in touch as soon as we can with that further update.

Yours sincerely

Ceri King'

121. On 4/5/2018 I wrote to Ceri King by E-Mail as follows:

'Two months later.... Can you please update me with specifics? Who have you communicated with (names of individuals) and what have they said in reply and when?

Graham Senior-Milne'

122. On 14/5/2018 Ceri King wrote to me by E-Mail as follows:

'Dear Mr Senior-Milne

We apologise for the delay in the progress of your claim.

As you know, your claim requires to be adjudicated on by the relevant Law Officer who will advise the Crown on its merits. Depending on the outcome of that, it may then be referred to the Committee of Privileges.

We are working closely with colleagues across government to ensure that your claim, which as you know is contested, is properly scrutinised.

Unfortunately, although we have been working hard to progress this, I am still not yet able to provide you with a timescale for adjudication, but can only reiterate that I will provide such information to you as soon as it is available.

Further, I'm afraid that we are unable to provide names of individual staff members working on this matter, given that they are all acting in their capacity as representatives of and advisors to the UK Government and the Crown Office (rather than as individuals acting on their own account). The petition has been lodged with the Crown Office in accordance with the prescribed procedure, and this office should therefore remain your point of contact.

Please rest assured that we are doing our utmost to prioritise this claim, and are aware of its pressing nature, given the time which has elapsed since your initial petition.

Yours sincerely,

Ceri King'

123. On 21/6/2018 I wrote to Ceri King by E-Mail as follows:

'Ms. King,

If you were genuinely trying to help me then you would be prepared to explain exactly who is doing what, because you would be confident that no-one has

done anything wrong. You would certainly be prepared to explain exactly what is holding the process up, not least because I might be able to help (knowing far more about all this than you or anyone else). Your response shows quite clearly that you are obstructing a judicial process. This misconduct in public office and an attempt to pervert the course of justice, both of which are serious criminal offences. I now have no option but to either petition the Queen directly or to start a private prosecution of you and others involved - or both. My first step is likely to be to have you summoned to court to answer questions. I give you advance notice of this so that you can be in a position to answer questions and it will not, hopefully, be necessary to get a court order to obtain information from you. This is a criminal process in a criminal court. There is simply no way on earth that the delays to the process can be reasonably justified.

Please notify your superiors of this as an official complaint against you.

Graham Senior-Milne'

124. On 27/6/2018 Ceri King wrote to me by E-Mail as follows:

'Dear Mr. Senior-Milne,

Once again I can only apologise on behalf of my colleagues for the delay. We are engaged in active discussion with the Lord Advocate's office in order to confirm the appropriate Law Officer to take this matter forward.

Once a position is reached regarding the appropriate Law Officer, we will be able to refer your case to the next stage of consideration. Whilst we cannot advise of a date by which we may receive confirmation of the position, we understand that this is under active consideration and they hope to be able to bring this consideration to a conclusion in the coming weeks.

Once again, please accept our apologies and sympathy for the delay.

Yours sincerely,

Ceri King'

125. Note that they hadn't even decided who is responsible for providing legal advice on my petition.

126. On 19/7/2018 I wrote to Ceri King by E-Mail as follows:

'These endless excuses, accompanied by a refusal to provide any explanation are no longer acceptable. I will proceed with a private prosecution.

Graham Senior-Milne'

127. On 3/8/2018 Ceri King wrote to me by E-Mail as follows:

'Dear Mr. Senior-Milne,

I write to provide you with an update on the progress of your petition. I do apologise once again for the delay in updating you.

The Advocate General for Scotland ("AGS"), as the relevant Law Officer, is now reviewing your petition with a view to preparing a report for the Crown. In making his report, the AGS may either recommend that the petition be granted, refused, or that it be further referred to the House of Lords Committee on Privileges and Conduct.

We will endeavour to provide you with a timescale for completion of that report as soon as we are able to do so. The contact for the Advocate General's Office is with the following email address:

privateoffice@advocategeneral.gsi.gov.uk

Yours sincerely

Ceri King'

128. So, it took a threat of private prosecution (only made after they had failed to respond properly to numerous requests from me) to get them to identify the person who will be providing legal advice on my petition. You will note that *'Atkin's Encyclopaedia of Court Forms in Civil Proceedings'*, which Grant Bavister of the Crown Office referred me to by an E-Mail dated 12/1/2015 (see above), identifies the Lord Advocate as the appropriate person for Scottish peerage claims. The Advocate General took over the role of advising the UK government on matters of Scots law from the Lord Advocate in 1998, so he was easily identifiable as the appropriate person. Note also that the Government confirmed that the Advocate General is the appropriate person in 2003, some 15 years ago (see quote from Hansard above). **In other words, it should have taken them about five seconds to identify the Advocate General as the appropriate person to advise on my petition, as follow:**

    a. **This is a petition relating to a Scottish peerage.**
    b. **It is therefore an issue of Scots law (Scottish peerage law).**
    c. **Who advises the government on issues of Scots law?**
    d. **The Advocate General.**

129. On 4/10/2018 I sent Viscount Ullswater, a member of the Committee for Privileges and Conduct, an earlier version of this letter by E-Mail. **I have received no reply.**

130. On 6/10/2018 I wrote to the House of Lords Commissioner for Standards by E-Mail as follows**. I have received no reply.**

'Dear Sir,

I refer to your letter to me dated 20/2/2018 in which you say that you cannot investigate my complaint because it concerns matters of policy and judgment. Your referred me to para. 116 of the Guide to the Code of Conduct.

Your assertion is not true because my complaint had nothing to do with policy or judgment; I complained that the two Lords did something (rule upon (dismiss) my peerage claim) which they had no authority to do, given that peerage claims are within the exclusive jurisdiction of the House of Lords as a whole - something which my petition makes abundantly clear. In other words, it doesn't matter what their judgment in the matter was because they had no authority to make a judgment in the first place. Also, I am not challenging or questioning policy in any way. It is not a question of policy; it is a simple matter of fact that they had no authority to do what they did. Policy does not come into it.

The question you need to ask is a simple one. Given that the House of Lords as a whole has exclusive jurisdiction in peerage claims, what authority do the two Lords have to dismiss a peerage claim, which is what they have done? None at all. This is all you need.

My view is that this should have been obvious to you; indeed, was obvious to you, and that your letter to me of 20/2/2018 was intentionally misleading. The fact that you have misled me is what has prevented me from raising this matter earlier.

Given that you are not excluded from investigating my complaint under para. 116, I will be grateful if you would now do so.

Yours sincerely,

Graham Senior-Milne'

131. On 7/10/2018 I wrote to Lord McFall of Alcluith by E-Mail as follows, attaching a draft copy of a complaint to the House of Lords Commissioner for Standards. This complaint concerned his failure to declare a potential conflict of interest and referred to paras. 36, 37, 87 and 88 of the Guide to the House of Lords Code of Conduct. The nature of the conflict of interest is explained in my letter (above). **I have received no reply.**

    'Para. 110 of the Guide to the House of Lords Code of Conduct says:

    'Non-members wishing to make a complaint should normally first make their dissatisfaction known to the member concerned and give the member an opportunity to respond.'

    I therefore give you notice of the attached complaint.

    Graham Senior-Milne'

132. A few days later I sent this complaint to the House of Lords Commissioner for Standards by recorded delivery. **I have received no reply.**

133. On 8/10/2018 I wrote to all the members of the Committee for Privileges and Conduct as follows, attaching an earlier version of this letter. I did this via Dr. Christopher Johnson (johnsonc@parliament.uk), possibly a former clerk of the committee, and Chloe Mawson (mawsonc@parliament.uk), the current contact on the Parliamentary website (https://www.parliament.uk/business/committees/committees-a-z/lords-select/privileges-committee-for-privileges/contact-us/), who may have prevented my letter from reaching the addressees. **I have received no reply.**

    'Dear Sir or Madam,

    I will be grateful if you would forward the attached documents (a letter and petition) to all the members of the Committee for Privileges and Conduct and to the Lord Speaker, as per distribution list in the attached letter. Please confirm that you have done this.

    If I do not receive a reply within 14 days I will proceed with a private prosecution in the Westminster Magistrates' Court. Initially this will be of the Lord Speaker and the Chairman of the Committee for Privileges and Conduct, but will later include all members of the Committee.

    The attached letter explains why Parliamentary privilege does not apply.

    Yours sincerely,

    Graham Senior-Milne'

134. I have not heard from Ceri King for three months (since 3/8/2018) and have heard nothing at all from the Advocate General's office.

Conclusion

135. We have clearly reached the point which you always reach with officials who do not want to answer your questions or help you resolve whatever matter it is your approached them with; namely, the point at which they label you a troublemaker, if not a lunatic. This allows them to turn the blame round on you, so that it is not they who are to blame for refusing to do their jobs, it is you who are to blame for refusing to shut up and go away. Almost everyone who takes up more than five minutes of their time will be labelled a troublemaker and if you speak to them on the phone, you will begin to detect a note of irritation in their voices after about two minutes. There's nothing wrong with them; it is the public who are the problem. What do we think they are there for? To help the public? For Heaven's sake!

136. I am now proceeding with the private prosecution as stated.

House of Commons

Treasury Committee

Banking Crisis

Volume II

Written evidence

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The Treasury Committee

The Treasury Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of HM Treasury, HM Revenue & Customs and associated public bodies.

Current membership

Rt Hon John McFall MP (*Labour, West Dunbartonshire*) (Chairman)
Nick Ainger MP (*Labour, Carmarthen West & South Pembrokeshire*)
Mr Graham Brady MP (*Conservative, Altrincham and Sale West)*
Mr Colin Breed MP (*Liberal Democrat, South East Cornwall*)
Jim Cousins MP (*Labour, Newcastle upon Tyne Central*)
Mr Michael Fallon MP (*Conservative, Sevenoaks*) (Chairman, Sub-Committee)
Ms Sally Keeble MP (*Labour, Northampton North*)
Mr Andrew Love MP (*Labour, Edmonton*)
John Mann MP, *(Labour, Bassetlaw)*
Mr George Mudie MP (*Labour, Leeds East*)
John Thurso MP (*Liberal Democrat, Caithness, Sutherland and Easter Ross*)
Mr Mark Todd MP (*Labour, South Derbyshire*)
Mr Andrew Tyrie MP *(Conservative, Chichester)*
Sir Peter Viggers MP (*Conservative, Gosport*)

The following members were also members of the committee during the inquiry: Mr Philip Dunne MP *(Conservative, Ludlow)*, Mr Stephen Crabb MP *(Conservative, Preseli Pembrokeshire)*, Mr Siôn Simon MP*, (Labour, Birmingham, Erdington)*

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/treascom.

A list of Reports of the Committee in the current Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Dr John Benger (Clerk), Sîan Woodward (Second Clerk and Clerk of the Sub-Committee), Adam Wales, Jon Young, Jay Sheth and Cait Turvey Roe (Committee Specialists), Phil Jones (Senior Committee Assistant), Caroline McElwee (Committee Assistant), Gabrielle Henderson (Committee Support Assistant) and Laura Humble (Media Officer).

Contacts

All correspondence should be addressed to the Clerks of the Treasury Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5769; the Committee's email address is treascom@parliament.uk.

List of written evidence

The following written evidence will be published in Volume III

Bank 6—"No (subject to normal regulatory constraints such as compliance with international sanctions policy etc.). For example, accounts remain open for expatriates, returning overseas students, economic migrants. There is nothing to stop these or any other account-holder maintaining their account when no longer residing in UK (in some cases this may involve the account being transferred to our nominated specialist branch)."

Question 5: If yes to 4, why?

Bank 1—N/A

Bank 2—N/A

Bank 3—N/A

Bank 4—"We have a Country Control Policy for AML purposes, which outlines certain high risk and prohibited jurisdictions. The only jurisdiction currently classed as Prohibited is Iran."

Bank 5—"Not for the majority of our customers (please see answer to Question 4)."

Bank 6—N/A

Memorandum from Graham Senior-Milne

Over the last few weeks I have watched the proceedings of the Treasury Select Committee, which you chair, with a sense of increasing outrage. Let me explain why, in terms which, as a simple accountant and auditor, I hope most people will understand.

The global recession has been caused largely by the banking crisis. The banking crisis has, in turn, been caused largely by excessive risk-taking by banks around the world, but principally in the USA and the UK, who have undeniably "led the pack". The excessive risk-taking by UK banks has been enabled by a weak regulatory regime. To put it the other way round, a strong regulatory regime in this country could certainly have avoided the worst effects of the banking crisis. The banking regulator in this country is the FSA, which is a supervisory arm of government, set up by and acting on behalf of the Treasury. It is therefore largely the government's responsibility that the banking system in this country is in such a mess.

The Labour Government in general, and Gordon Brown in particular, have fostered a risk-taking and loosely-regulated banking environment since coming into office and the blame for doing that must be laid squarely at their feet.

So where does the Treasury Select Committee come into it? Well, your Committee, like all Parliamentary Committees, is there to hold the executive to account; that is, to ensure that the Government is doing its job properly. On this basis your Committee oversees the FSA on behalf of Parliament. The question therefore arises as to how well your Committee has done its job of overseeing the FSA in the past 10 years or so and whether it (the Committee) could or should have done more to prevent the current banking crisis.

In October 2008, the Parliamentary Ombudsman issued her report on the Equitable Life Crisis, and that report identified serious wrong-doing on the part of the FSA, including that it had "actively misled" policyholders. What she identified were not isolated acts of negligence or misconduct by individuals, but widespread, continuing, systematic (institutionalized) and conscious wrong-doing on the part of the organisation; in short, a body that was clearly, to use John Reid's words, "not fit for purpose" as a regulator.

The point is that the Equitable Life Crisis happened back in 1999 and 2000.

All the key evidence that was available to the Parliamentary Ombudsman for the purposes of her 2008 report was available to your Committee when it investigated and reported on the Equitable Life Crisis in 2001. The only conclusion is therefore that had you investigated the Equitable Life Crisis properly in 2001 then you would have identified that the FSA was "not fit for purpose" as a regulator at that time, and had you done this then you could have taken steps to radically reform the FSA 7 YEARS AGO. Had you done this (that is, turned the FSA into an organisation that identified and dealt with problems robustly rather than brushing them under the carpet) then it is probable that the UK could have avoided the worst effects of the banking crisis—or, at least, that we stood a good chance of doing so.

But there is more. Not only was all the key evidence concerning the FSA's lack of fitness for purpose available to your Committee back in 2001, but on 22 August 2003 my then MP, Sir Archy Kirkwood, wrote to your Committee on my behalf on this very subject (the FSA's misconduct during the Equitable Life crisis and in relation to GAR liabilities generally). You then spent the next four years fighting what I can only describe as a rear-guard action in order to avoid investigating this matter and I even understand that, as a result of your efforts, it was never even considered by the Committee as a whole.

As Chairman of the Treasury Select Committee since 1999 you have been entrusted with a great responsibility, which is to hold the Government to account on behalf of Parliament. It is clear that you have, in fact, done precisely the opposite; you have sought to protect the Government as far as you possibly could. In acting as you did, you, and the other Labour members of the Committee who have acted in concert with

you, are primarily responsible for the failure to ensure that the FSA was fit for purpose as a regulator. In order to identify one of the main causes of the banking crisis in the UK, you need to look no further than your own mirror.

During the session of the Treasury Select Committee on 10th February 2009, a member of the Committee, Nick Ainger MP, asked the former bank executives attending at that time (Sir Tom McKillop, Sir Fred Goodwin, Lord Stevenson and Andy Hornby) what banking qualifications they had. Although I feel it might be an idea to ask you this question as well, I am sure you will appreciate why I feel it is not qualifications that matter in the banking industry, it is trustworthiness. It is largely lack of trust that is responsible for the current credit squeeze and it is trust that must be rebuilt—but we need to be able to trust not just the banks and the people who run them but the regulator who oversees the banks and the politicians who oversee the regulator.

In order to rebuild trust at the political level, it is essential that, in future, the Treasury Select Committee should be chaired by an opposition MP.

This is my recommendation to the Committee.

21 February 2009

Further memorandum from Graham Senior-Milne

I am writing further to my E-Mail below and, in particular, to my comment that the FSA was clearly not fit for purpose back in 2001. I read in the *Daily Telegraph* that Lord Turner of the FSA stated in evidence to the Committee today "that the regulator had not been fit for purpose for much of the past decade", which exactly reflects what I have said. In my view, much of the blame for this can be laid squarely at the feet of Mr. McFall who consistently failed to hold the government to account during his chairmanship of the Committee for its policy of lax regulation and, indeed, that he actually acted to protect the government from being held accountable during this period—something that he continues to do.

25 February 2009

Memorandum from Timothy Hicks, FCA, Ex-Development Accountant for the HBOS Subsidiary Clerical Medical Europe

1. Personal Credentials

1.1 I am a Chartered Accountant qualified in 1986.

1.2 I have worked in Financial Services since 1990, specialising in internal control and have experience in fraud investigation and computer systems.

1.3 In 1998 I submitted evidence to the Nolan Committee on Standards in Public life on protection for whistleblowers.

1.4 I was employed by HBOS from October 2002 until August 2005 in their subsidiary Clerical Medical Europe in Luxembourg.

2. Background

2.1 Clerical Medical used an electronic system to approve all invoices, expense claims and credit card bills in which they would be scanned into the system and sent to the approver to electronically authorise. In September 2004 it came to my attention that the Sales Director had given his password to all of the Finance systems to a temporary secretary and told her to approve all invoices, expense claims (including her own) and credit card bills without reference to anyone else. I objected to this because it was contrary to bank policy, constituted a material failure of Financial Control and allowed an outsider to pay her own expenses and hundreds of thousands of Euros worth of invoices without any review or supervision by HBOS. On a related issue, I also complained that Clerical Medical did not have an expenses policy and that consequently the European Strategy Director was authorising expenses claims from his employees for cigarettes and which were unsupported by receipts. I reported both of these matters to the Finance Director, who refused to take any action. The European Strategy Director then made a written complaint about me because I had asked him not to authorise the payment of cigarettes with HBOS funds and not to approve expenses claims which were unsupported by a receipt.

2.2 The temporary secretary that had access to the passwords complained about me to HR and alleged that I had called her "incompetent" in an e-mail. This was an allegation of gross misconduct, for which I could be summarily dismissed, so I was interviewed by the HR Manager. I denied the allegation and asked

Dr. Joseph J. Morrow QC LLD
Lord Lyon King of Arms

THE COURT OF THE LORD LYON
H.M. NEW REGISTER HOUSE
EDINBURGH EH1 3YT
Tel. 0131-556-7255
E-mail: Lord.Lyon@gov.scot

Our Ref: JJM/LAI

20 March 2017

Miss Elaine Chilver,
Deputy Head of the Crown Office,
Ministry of Justice,
Room 9.25A,
102 Petty France
LONDON SW1A 9AJ

Dear Miss Chilver

Feudal Barony of Mordington – Graham Nassau Gordon Senior-Milne

Thank you for the Petition relating to the above. For completeness I have also received the tract change version of 48 pages and a further amended 58 page Petition received on 17 March. I have considered all the documents placed before me.

There is no doubt that Mr Senior-Milne's claim is based on his ownership of the Feudal Barony of Mordington. While recognised as a "dignity" in Scots law, these titles are a leftover from feudal land in Scotland.

The key to this is in the Letters Patent included in the papers signed under the hand of Lord Lyon Blair (the relevant part being line 10 and following and the reference to the Disposition dated 28 May 1998). This Disposition appears to transfer from Mr Senior-Milne's wife, the dominium directum, the Superiority of the lands and Barony of Mordington.

In the land law of Scotland at the date of the signing of the Disposition such Baronies were attached to land and formed part of the ownership of the land. In this case Mr Senior-Milne did not have the use of the land according to the Letters Patent but only owned the Superiority. On the basis of this ownership, which in law can be bought, Mr Senior-Milne came under the jurisdiction of the Lord Lyon for a Grant of Arms. This was done through the Letters Patent included in the papers dated 30 October 2007. The essential information is that such feudal baronies can be bought and sold and have never been understood to form part of the peerage in Scotland. They are part of historic feudal law.

In peerage law there is a grant to a specific person with a destination of the peerage. This is not the case with feudal baronies which are bought and sold today on a private Register. The link between land and any baronial dignity was abolished by the Abolition of Feudal Tenure, etc (Scotland) Act 2000 at Section 63.

I based my conclusion on the material before me and have reached the view that Mr Senior-Milne's Petition is misconceived. He did own the Feudal Barony at the time of his Grant of Arms which brought him under the jurisdiction of the Lord Lyon. As I said above, from the evidence it is unclear if Mr Senior-Milne still even owns the barony which can be bought and sold privately. His dignity as the feudal baron of Mordington does not equate to being a peer of Scotland and hence he is not entitled to stand in a by-election to a vacant seat reserved of a hereditary Peer.

The petition should be refused.

Yours sincerely

Dr Joseph J Morrow, QC, LLD
Lord Lyon King of Arms

TO ALL AND SUNDRY WHOM THESE PRESENTS DO OR MAY CONCERN

WE, Robin Orr Blair, Lieutenant of the Royal Victorian Order, Writer to Her Majesty's Signet, Lord Lyon King of Arms, send Greeting; Whereas, GRAHAM NASSAU GORDON SENIOR-MILNE, (formerly Graham Nassau Gordon Milne) BARON OF MORDINGTON in the County of Berwick, residing at 39 Castle Street, Norham in the County of Northumberland, and formerly at Edrington House, Mordington in the County of Berwick, having by Petition unto Us of date 26 May 2002 Shewn; THAT he, the Petitioner, born Oxford in the County of Oxford 29 September 1955 [who married Shipbourne in the County of Kent 25 June 1983 Annabel Catherine Margaret Horsfield and has issue by her an elder son James Nassau Gordon Milne (born London 2 July 1985), a second son Hugh Nicholas Milne (born Edinburgh 27 March 1991) and an only daughter Georgina Thea Gordon Milne (born Berwick-upon-Tweed in the County of Northumberland 23 October 1992)] is the elder son of the late Denys Gordon Milne, Commander of the Most Excellent Order of the British Empire, and his wife (married Oxford 5 July 1951) Pamela Mary, daughter and co-heiress of Oliver Nassau Senior; THAT the Petitioner's said mother is the senior heraldic co-heiress of Ascanius William Senior, Pylewell House, near Lymington, High Sheriff of Hampshire who was of date 26 March 1767 granted certain Ensigns Armorial under the hands and seals of Garter King of Arms and Clarenceux King of Arms which Ensigns Armorial the Petitioner may now enjoy as a quartering; THAT by Disposition of date 28 May 1998 recorded in the General Register of Sasines for the County of Berwick of date 16 June 1998 the Petitioner and his spouse were infeft in All and Whole the Lands and Barony of Mordington and that by further Disposition of date 12 February 2004 the Petitioner's said spouse disponed to the Petitioner her interest in the dominium directum of the said Lands and Barony and accordingly the Petitioner was infeft in the said barony as at 11 November 2004; AND the Petitioner having prayed (Primo) that he might be Officially Recognised in the name Graham Nassau Gordon Senior-Milne, Baron of Mordington and (Secundo) that he might be granted such Ensigns Armorial as might be found suitable according to the Laws of Arms to be borne quarterly with the foresaid Ensigns Armorial for Senior, together with the additaments appropriate to a feudal baron in the baronage of Scotland; Know Ye Therefore that Conform to Our Warrant of date 20 December 2004 We have (Primo) OFFICIALLY RECOGNISED as We do by These Presents OFFICIALLY RECOGNISE the Petitioner in the name Graham Nassau Gordon Senior-Milne, Baron of Mordington and (Secundo) Assigned, Ratified and Confirmed as We do by These Presents Assign, Ratify and Confirm unto the Petitioner and his descendants with such due and congruent differences as may hereafter be severally matriculated for them the following Ensigns Armorial as depicted upon the margin hereof, and matriculated of even date with These Presents upon the 111th page of the 86th Volume of Our Public Register of All Arms and Bearings in Scotland, VIDELICET:- Azure, a cross moline between four fleurs de lys Or; which Ensigns Armorial are to be borne quarterly with the Armorial Bearings for Senior in the following manner, VIDELICET:- Quarterly, first and fourth, Azure a cross moline between four fleurs de lys Or; second and third per fess Gules and Azure, a fess Ermine between in chief two lions' heads erased Or and in base a dolphin naiant embowed Argent. Above the Shield is placed a chapeau Gules furred Ermine (in respect of his feudal barony of Mordington) thereon an Helm befitting his degree with a Mantling Azure doubled Or, and on a Wreath of the Liveries is set for Crest the head, neck and wings of a swan bearing in its beak a Tudor rose Proper seeded Or, and in an Escrol over the same this Motto "HONORE ET AMORE"; which chapeau is destined to the Petitioner and his heirs in the said barony of Mordington; by demonstration of which Ensigns Armorial he and his successors in the same are amongst all Nobles and in all Places of Honour, to be taken, numbered, accounted and received as Nobles in the Noblesse of Scotland: In Testimony Whereof We have Subscribed These Presents and the Seal of Our Office is affixed hereto at Edinburgh, the 30th day of October in the 56th Year of the Reign of Our Sovereign Lady Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland, and of Her Other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, and in the Year of Our Lord Two Thousand and seven.

R. O. Blair
Lyon